

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DEAUNNA PHILLIPS, Plaintiff, CIVIL ACTION FILE
by and through her Mother, NO: 1:19-CV-00401-MHC
SPARKLE STIDWELL,
as next friend,

Plaintiffs,

vs.

YASIN ABDULAHAD,

Defendant.

VOLUME I

The videoconference deposition of EL MALIK
ROBESON-EL; the reading and signing of the deposition
being waived; taken before Cathy Cox, Certified Court
Reporter, commencing at 10:02 a.m., on the 16th day of
March 2021.

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P R O C E E D I N G S

MR. SPEARS: Let the record reflect that this will be the deposition taken for purposes of discovery and cross-examination and all other purposes permitted by the Federal Rules of Civil Procedure. The deposition will be conducted pursuant to those rules and to that end, as the deposition proceeds, all objections other than as to the form of the question and the responsiveness of the answer will be reserved until such time of this deposition or any portion thereof may be made use of during the course of this litigation.

The deposition is being taken pursuant to notice and agreement of counsel as to the time and date and manner of taking of the deposition. It, of course, is a remote deposition.

As I understand it, the witness is alone; is that correct, sir?

THE DEPONENT: Yes.

MR. SPEARS: All right. And we have all other counsel being remote at this time. Let's see, could you please swear in the witness and then I'll ask if anyone else has anything else to ask.

1 (Deponent was sworn.)

2 MR. SPEARS: Before, I start asking
3 questions any questions from counsel or anything
4 counsel wishes to state on the record before we
5 start.

6 MS. MILLER: No, thank you.

7 COURT REPORTER: Mr. Spears, should I go
8 ahead and state -- ask for an agreement?

9 MR. SPEARS: Oh, sure, go ahead with your
10 statement.

11 COURT REPORTER: I will ask counsel to agree
12 on the record that under the current National
13 Emergency pursuant to Section 319 of the Public
14 Health Service Act, there is no objection to this
15 deposition officer administering a binding oath
16 to the witness by videoconference. Please state
17 your agreement on the record.

18 MR. SPEARS: We agree. Plaintiff.

19 MS. MILLER: Counsel for the defendants, we
20 agree.

21 EL MALIK ROBESON-EL,
22 having been first duly sworn, was examined and
23 testified as follows:

24 CROSS-EXAMINATION

25 BY MR. SPEARS:

1 Q All right, Mr. Robeson, let me start by
2 asking a few questions just to be certain that we're
3 able to proceed successfully with the deposition.
4 First of all, are you able to hear me clearly?

5 A Yes, I am.

6 Q And at any point during the course of this
7 deposition if I have asked you anything or said
8 anything and you have not understood me, will you
9 please tell me that?

10 A Yes.

11 Q And you understand, of course, that if you
12 don't tell me to explain or to repeat a question, I'll
13 assume that before you answer that you understood the
14 question and answered it pursuant to your
15 understanding; is that agreeable?

16 A Yes. Yes.

17 Q Have you had your deposition taken before?

18 A No, sir.

19 Q Have you sworn under oath to testify while
20 in court?

21 A Yes.

22 Q And approximately how many times that's
23 taken place, please?

24 A I can't count it. Numerous amount of times.

25 Q Would it be hundreds?

1 A Yes.

2 Q And during the course of your adult life
3 have you ever yourself brought a lawsuit?

4 A No. No, sir.

5 Q Have you yourself ever been a defendant? A
6 named party as a defendant in a lawsuit?

7 A For a car accident, yes.

8 Q For any other matter?

9 A No, sir.

10 Q The car accident that occurred, was that one
11 in which at the time it occurred you were in law
12 enforcement?

13 A Yes.

14 Q Did it involve -- were you in a law
15 enforcement vehicle?

16 A Oh, no, sir. No.

17 Q You just happened to be at that time to be a
18 law enforcement officer?

19 A Yes.

20 Q As we're proceeding today, are there any
21 physical conditions that for you make it difficult for
22 you to hear or to understand my questions?

23 A No.

24 Q Are there any conditions that you have on
25 this day that make it difficult for you to express

1 yourself or remember?

2 A No, sir.

3 Q Have you ever been known to be hard of
4 hearing?

5 A No.

6 Q Have you ever had earaches or conditions
7 that make it difficult to hear from time to time?

8 A I had earrings, but I don't -- yes, I had
9 earrings before in the past.

10 Q Okay. And I may not have been clear in the
11 way I asked a question. The question as asked had to
12 do with earaches, such as an infection in your ear.
13 Have you ever had that circumstance?

14 A Yes, as a child, but not as a adult.

15 Q And have you ever worn glasses?

16 A Yes.

17 Q And currently you have prescription lenses
18 of any kind?

19 A Yes.

20 Q And are those the kind that you wear such as
21 myself or are they contacts?

22 A Yes, the ones you wear. Like the ones you
23 have, yes.

24 Q All right. And are you nearsighted or
25 farsighted?

1 A I just use them for reading. I am far --
2 farsighted.

3 Q I understand. So you're able to use the
4 glasses in order to read, but otherwise you're able to
5 see at a distance successfully?

6 A Yes.

7 Q Please state your full name.

8 A El Malik Robeson-El.

9 Q And the name of Malik means king?

10 A Yes.

11 Q And is that a given name or is that one that
12 you by chance may have added as a first name?

13 A It was given.

14 Q Thank you. And are you married, sir?

15 A No, sir.

16 Q In 2017 were you married?

17 A No, sir.

18 Q Do you have any children?

19 A Yes.

20 Q And what are their ages, please?

21 A 26, 21, 19, 7 and 5.

22 Q And have you been married in the past?

23 A Yes.

24 Q And did there come a time when there was a
25 judicial proceeding that resulted in the conclusion of

1 or divorce of that marriage?

2 A Yes.

3 Q Have you been married more than once?

4 A No, sir.

5 Q Your ex-spouse's name, what is that?

6 A Nicole Fleming.

7 Q And please tell me what occupation she has.

8 A I don't know. I haven't spoken to her in a
9 while. I couldn't tell you.

10 Q During your marriage, what was it?

11 A She was -- she was working for a hospital.

12 She was a nurse's assistant at the time.

13 Q In 2017, were you the owner of a 2013 Lexus?

14 A Yes.

15 Q And were you the owner of a 1996 GMC Sonoma
16 truck?

17 A Yes.

18 Q And in 2017, your cellphone service provider
19 was Sprint; am I correct?

20 A Yes.

21 Q And your cellphone number at that time was
22 404-621-1531; is that correct?

23 A Yes.

24 Q Is that still your cellphone number?

25 A No, it isn't.

1 Q And when did you change it?

2 A I think I changed it like a year ago.

3 Q Okay. All right. And throughout the period
4 of time then from 2017 until about a year ago, was
5 your cellphone provider still the Sprint Company?

6 A Yes.

7 Q And you still had that same cellphone
8 number?

9 A Yes.

10 Q Okay. In early 2017, please tell me what
11 social media platforms you used?

12 A Instagram.

13 Q Any others?

14 A No, sir.

15 Q Did you have a Facebook account?

16 A No. I had a Facebook account like years ago
17 when it first -- when it first -- when it first --
18 when it first started, but I never -- I don't use it.

19 Q And have you ever had a LinkedIn profile or
20 used that service?

21 A No, I didn't. I think the job created one
22 for me, but I didn't have access to it. I never had a
23 password or anything to it.

24 Q There are some other websites I'd like to
25 ask you about. And tell me, please, whether or not

1 you participated in or read or posted to any of the
2 following: There's one called Police One, are you
3 familiar with that?

4 A No.

5 Q There's one called Cops In The Hood. Are
6 you familiar with that?

7 A No, sir.

8 Q There's one entitled Protect And Serve. Are
9 you familiar with that?

10 A No.

11 Q Do you currently participate or in the
12 past -- let me first ask it this way. In the past
13 have you participated in any private discussions
14 forums about police work?

15 A No.

16 Q Have you served in the military?

17 A Yes.

18 Q Please tell me about that.

19 A I performed in the United States Navy from
20 1997 to 2000.

21 Q And where were you stationed, please?

22 A I was stationed on the USS George Washington
23 CVN73 in Norfolk, Virginia.

24 Q And can you describe for us what your
25 primary duty was as you were in the Navy?

1 MS. MILLER: Objection; but you can answer.

2 A Okay. I started out as air traffic -- I
3 mean parking air crafts, and then I changed my job to
4 an IT. Information technologist, fixing computers.

5 Q And were you working in IT when you left the
6 Navy?

7 A Yes.

8 Q And when you left the Navy --

9 A No, I'm sorry. Before I left the Navy.
10 Before I left the Navy. After the Navy, no.

11 Q All right. And what occupations did you
12 have after you left the Navy and before you became a
13 police officer?

14 A I was a correctional officer.

15 Q For what agency or department?

16 A State of Maryland, Patuxent Institution of
17 Maryland.

18 Q Sorry. You gave us a name of an
19 institution. What was that again, please?

20 A Patuxent.

21 Q Can you please spell that for the court
22 reporter?

23 A P-A-T-U-X-E-N-T (spelling).

24 Q And as a correction officer, did you -- were
25 you certified? Did you have the authority to arrest?

1 A No.

2 Q When did you become P.O.S.T. certified by
3 the State of Georgia?

4 A Two thousand -- I graduated the Academy in
5 March 2008.

6 Q And have you ever worked for any law
7 enforcement agencies other than for the City of
8 Atlanta?

9 A Yes.

10 Q What other agencies?

11 A University of Baltimore and University of
12 Baltimore College and Baltimore Housing Authority.

13 Q In the state of Georgia, are there any
14 agencies that you have worked for -- law enforcement
15 agencies other than the City of Atlanta?

16 A No, sir.

17 Q And within the City of Atlanta for what
18 divisions or sections of the police department have
19 you worked?

20 A Just CIU, and I worked the Gun Unit for like
21 a year. And the rest of my -- I just was working in
22 Field Operations Division. CIU is a Criminal
23 Investigating Unit.

24 Q The initials CIU, is that Criminal
25 Investigations Unit?

1 A Yes.

2 Q And with the -- let's see, with the Gun
3 Unit -- did you say Gun Unit earlier?

4 A Yes, yes.

5 Q Was that also known or has that also been
6 known as the Gun Reduction Task Force.

7 A Yes.

8 Q All right. How long -- was that a section
9 of the Gangs Unit?

10 A No, sir. It was -- it was a section in the
11 Major Crimes Unit. It's done changed. I can't --
12 when I started it was -- it was -- it was just putting
13 together a unit at the time when it first began. So
14 it was a Major Crimes Unit just known as the
15 Aggravated Assault Gun Unit where we just responded to
16 calls -- responded to shootings. We investigate
17 shootings, sorry.

18 Q And you say in -- you were with that for
19 about a year, I think you said?

20 A I think about a year. I can't give you
21 exact dates, but I'd say approximately a year.

22 Q All right. And were you in the -- what you
23 called the Gun Unit in January of 2017?

24 A Yes.

25 Q As was Officer Abdulahad?

1 A Yes.

2 Q While you were -- let's see, over the course
3 of time, you have made a number of arrests; correct?

4 A Yes.

5 Q And over the course of time you have made a
6 number of arrests for drug-related offenses including
7 possession of drugs?

8 A Yes.

9 Q And for assault, both miscellaneous and
10 felony assault?

11 A Yes.

12 Q And you've made arrests for marijuana
13 possession and other drugs?

14 A Yes.

15 Q Are you able to approximate for us the
16 number of drug arrests that you have made, and by drug
17 arrests I mean for possession of drugs?

18 A I'd say like hundreds.

19 Q In a given -- I take it you continue to work
20 with CIU?

21 A Yes.

22 Q And within a given month is there -- can you
23 give us an estimate of about how many arrests you will
24 make?

25 A Well, I don't physically make the arrests.

1 I just do the investigation and get a warrant for
2 their arrest. Another unit go make the arrest.

3 Q All right. Was that also the case in 2017?

4 A Yes.

5 Q With the Gun Unit, you described it as
6 responding to shootings and investigating shootings.
7 During the course of your service within the Gun Unit,
8 would you have occasion from time to time to seize
9 guns that were associated with a particular incident?

10 A Yes.

11 Q And sometimes those guns you would find them
12 to have been stolen; correct?

13 A I personally never had a gun -- seized a gun
14 that was stolen while I was in that unit, but I have
15 seized a gun a time or -- a time or two while during
16 my investigation.

17 Q At any time before January 26 of 2017, had
18 you ever heard of Deaundre Phillips?

19 A No, sir.

20 Q You had never encountered Mr. Phillips
21 before?

22 A No, sir, not that I could recall.

23 Q And you had no knowledge of anything about
24 him such as where he went to school? You didn't --

25 A No.

1 Q -- know anything about him?

2 A No.

3 Q You knew nothing about any of his associates
4 or his activities; is that correct?

5 A No, sir.

6 Q You knew nothing about where he had ever
7 been arrested?

8 A No, sir.

9 Q Nor, did -- I'm sorry, I didn't mean to cut
10 you off.

11 A I knew nothing about him. Never even seen
12 him before as far as I can recall. I wouldn't know if
13 I seen him again.

14 Q I'm sorry, please say again.

15 A I wouldn't know if I had seen him again.

16 Q And that evening on January 26, 2017, you've
17 had no knowledge of any warrants for his arrest; is
18 that correct?

19 A Correct.

20 Q Nor any knowledge of any status that he may
21 have vis-à-vis parole, probation, First Offender, any
22 of that?

23 A That's correct.

24 Q Fair to say then that as of that evening on
25 January 26th, 2017, there was nothing in his prior

1 history about which you had any information
2 whatsoever; correct?

3 A Correct.

4 Q So before Mr. Phillips was shot on that
5 evening all that you knew about him is what you had
6 heard and seen from the point that you pulled your car
7 -- you were in a car and pulled into the parking spot
8 until the point that you saw him and he was dead?
9 That's the time frame of your entire knowledge?

10 A Yes.

11 Q Am I correct in understanding that Officer
12 Abdulahad has never told you that he knew anything
13 about Phillips, has he?

14 A Correct.

15 Q And that would go both before or after the
16 shooting?

17 A Correct.

18 Q As to the car that Mr. Phillips was seated
19 in when you first arrived into the parking lot there
20 at the Annex, from your observation of the car, you
21 didn't notice any decals on the car, did you?

22 A No.

23 Q You didn't notice any strange markings on
24 the car?

25 A No.

1 Q Nor did you notice one way or another
2 whether the windows of the car were tinted or
3 difficult to see into?

4 A No.

5 Q From the outside of the car, that is to say
6 the car that Mr. Phillips was seated in, there was no
7 indication about it that there was anything illegal
8 inside of the car when you first observed it; correct?

9 A When I first observed it, no, I didn't.

10 Q You had no report to the effect that the car
11 had ever been involved in any unlawful activity at the
12 time that you observed it and before Mr. Phillips got
13 out of the car?

14 A Repeat that question. I don't understand.

15 Q All right.

16 A I don't understand the question.

17 Q Again, just trying to get a sense -- you
18 know, a sense of what you knew about -- first I've
19 asked you about Mr. Phillips and now I'm asking you
20 about the car.

21 As to the car itself, was there any
22 indication whatsoever to you as you observed it and
23 before you had contact with Mr. Phillips that there
24 was anything about the car that suggested it was being
25 used for any illegal activity?

1 A No.

2 Q Another way to put it is there was nothing
3 suspicious about the car; right?

4 A No, not as -- no, I didn't see anything. I
5 didn't see anything illegal about the car.

6 Q Okay. On the night of the shooting, do you
7 recall your chain of command? The officers in your
8 chain of command.

9 A No, sir. I don't remember who my chain of
10 -- no, huh-uh.

11 Q All right.

12 A It changed a lot.

13 Q And is it your recollection that officers in
14 your chain of command responded to the scene of the
15 shooting after it had occurred?

16 A No, sir. Not in my chain of command. I
17 think it was from that zone responded.

18 Q You said zone, Z-O-N-E, (spelling), zone?

19 A Yes. From that Zone, Zone 1.

20 Q Okay. Now on the night of Phillips' death,
21 you and Officer Abdulahad, you were working in plains
22 clothes; is that right?

23 A Yes.

24 Q And each of you were equipped with a
25 firearm; is that correct?

1 A Yes.

2 Q And that was a Glock? Each of you had a
3 Glock?

4 A Yes.

5 Q And did you or Officer Abdulahad carry any
6 additional weapons?

7 A I didn't.

8 Q All right.

9 A I don't know if he did or not. I wasn't
10 sure. He didn't tell me.

11 Q You were equipped with a flashlight?

12 A No.

13 Q Was there one in your vehicle?

14 A Huh, no.

15 Q On your person, how would you carry the
16 firearm that you had?

17 A In my holster.

18 Q And how was the holster positioned? Was it
19 positioned on your waist or elsewhere on your body?

20 A Around my waist.

21 Q And as to Officer Abdulahad, what do you
22 recall about how he positioned his holster?

23 A I think it was on his waist. If I'm -- yes,
24 it was on his waist.

25 Q It's my understanding that he was

1 right-handed; is that your recollection?

2 A Yes.

3 Q And in your observations of where he carried
4 his holster or positioned his holster, was it to his
5 left side, his right side? Where on his waist?

6 A It was on his right side.

7 Q Can you recall any other equipment -- issued
8 equipment that you carried on yourself as of that
9 evening or on that evening in addition to the firearm
10 that you had?

11 A My badge, my I.D., and my radio.

12 Q And where was the radio positioned?

13 A My radio was in my -- my radio was in my
14 pocket.

15 Q The radio in your pocket, is that -- I take
16 it then that was small enough it could fit into a --
17 was it a jeans pocket or a jacket pocket?

18 A A jacket pocket.

19 Q All right. So it was mobile. It wasn't
20 tethered to your body?

21 A Correct.

22 Q Was that also the case with Officer
23 Abdulahad?

24 A Yes. I think -- yes. He had a clip on
25 his -- I think he had a little clip on it where you

1 could clip it on your pocket.

2 Q Okay. Since January of 2017, have you ever
3 been contacted by any member of the Phillips family?

4 A No.

5 Q Have you ever been contacted by someone who
6 was a family friend of theirs reaching out to you for
7 any purpose?

8 A No.

9 Q Has that ever come to your attention that
10 any person from either Phillips family or family and
11 friends have reached out to or had any contact with
12 Mr. Abdulahad?

13 A Not that I know of, no.

14 Q After Mr. Phillips was shot by Officer
15 Abdulahad, are you aware of any special security
16 precautions that were taken with respect to your
17 physical safety?

18 A No.

19 Q Are you aware of any special security
20 precautions that were taken with respect to the
21 personal safety of Mr. Abdulahad?

22 A Yes. He had -- they put -- our agency
23 put -- our agency Homeland Security placed cameras on
24 his home.

25 Q And what's your understanding of what, if

1 anything, those cameras ever saw or found that related
2 to the security of Mr. Abdulahad?

3 A Say it again. I don't understand.

4 Q Did the cameras ever catch anybody trying to
5 threaten or interfere with Mr. Abdulahad?

6 A I'm not aware. No one told me anything.

7 Q Are you aware of any other steps taken other
8 than the placement of cameras at his home that were
9 steps taken in order to provide security to Officer
10 Abdulahad in the wake of the shooting?

11 A No.

12 Q Okay. Let me touch on a few -- just to kind
13 of get oriented. We'll see if I have some of these
14 facts right. I want to ask you a series of questions.
15 As I understand it, you and Abdulahad were at the
16 Annex January 26th, 2017, to pull a warrant; is that
17 correct?

18 A No. We went to go place a warrant in GCIC.
19 Once we get the warrant signed, you have to take it to
20 GCIC so they can place it in the system.

21 Q And the term you used is place, P-L-A-C-E
22 (spelling) form?

23 A Yes.

24 Q So I take it then that on your arrival there
25 was a warrant that was in existence already?

1 A Yes.

2 Q All right. That the -- that the two of you
3 had pursuant to some investigation that you were
4 conducting?

5 A Yes.

6 Q And was it one warrant or more than one?

7 A I can't recall. I think it was more than
8 one.

9 Q Okay. And the warrant had been -- it was
10 already issued --

11 A Yes.

12 Q -- by the time you arrived at the parking
13 lot?

14 A Yes.

15 Q Okay. And what -- it was issued by virtue
16 of, I take it, a magistrate signing the warrant?

17 A Yes.

18 Q And was that signing of the warrant done
19 electronically or was that done in person with you and
20 Officer Abdulahad or either of you meeting with a
21 magistrate?

22 A Electronically.

23 Q All right. Do you recall anything about
24 that warrant either who it was for or what it was for?

25 A No.

1 Q All right. So the warrant was already
2 issued and you went to that location to place the
3 warrant into the GCIC system; is that correct?

4 A Yes.

5 Q And the initials GCIC stand for what?

6 A So I'm not sure. I forgot, sir. I forgot
7 the --

8 Q Let me ask you this: Do you recall there's
9 such a entity known as the Georgia Crime Information
10 Center?

11 A Yes. Yes.

12 Q And for purposes of placing the warrant, is
13 it accurate to say that you went to the Annex in order
14 to place the warrant with the Georgia Crime
15 Information Center?

16 A Yes.

17 Q All right. What is it going to the Annex
18 that is associated with placing a warrant on the GCIC
19 system?

20 A Okay. Once we get the warrant signed from
21 the judge, we got to place -- put some documents
22 together. We got to do the criminal history on the
23 subject and fill out some documents that they require
24 us to fill out. Like, demographics of the subject,
25 and we just take it there. Put it in the packet. And

1 we give it to them and they review it and make sure we
2 done everything correctly, and they'll place
3 everything in the system.

4 Q All right. The GCIC system, that's a system
5 for which there is limited access; correct?

6 A Yes.

7 Q And neither -- on that evening, neither you
8 nor Officer Abdulahad yourselves had access to the
9 GCIC, that is to say, to where you could go on it
10 yourself? Am I right?

11 A Yes.

12 Q Okay. And so I take it then there's some
13 office at the Annex that processes the receipt of
14 warrants and associated documentation and then post
15 that information with GCIC?

16 A Yes.

17 Q Is there a particular name for that office?

18 A Just GCIC. Just GCIC.

19 Q By that I mean within APD, is that the name
20 given to the APD office as well?

21 A Yes.

22 Q And prior to your arrival had you alerted
23 the APD GCIC office that you were on your way?

24 A No.

25 Q Once you arrived at the parking lot, did

1 either of you two officers contact dispatch to let
2 them know that you had arrived?

3 A No.

4 Q Okay. Going back to that list that I
5 referred to before, just to kind of get some
6 parameters down on what happened that night.

7 Is it your testimony that at the time
8 that Mr. Phillips was killed that you did not hear a
9 gunshot?

10 A No, I didn't.

11 Q You never heard it?

12 A No, I didn't.

13 Q And when the Malibu driven by Phillips came
14 to a stop, it didn't hit anything, did it?

15 A No.

16 Q What, if anything, did you observe that as
17 you were looking at the vehicle caused the Malibu to
18 stop?

19 A I had tunnel vision on the tag. I was
20 looking at the tag and that's all I remember seeing is
21 the tag. The tag number. I was looking at the tag
22 number. That's it. That's all I can recall.

23 Q Insofar what caused that car to stop -- stop
24 at that timing, am I correct in understanding then
25 that you have no information from your own observation

1 what caused it to stop?

2 A No, I didn't.

3 Q When you were alongside of the Malibu and
4 Phillips were at that point where Mr. Phillips had
5 opened the door, was standing alongside -- before
6 Phillips -- let me rephrase the question because I
7 don't want it to get too long.

8 Do you understand where we are, though,
9 time-wise? He's alongside the car. You're alongside
10 the car. And Mr. Abdulahad is there with you.

11 A Yes.

12 Q At that point in time, am I correct, that
13 Mr. Phillips did not throw any punches, did he?

14 A No. No.

15 Q And he never kicked you or anybody else at
16 that time?

17 A No. He grabbed me.

18 Q Was that before or after he was shot?

19 A That was -- that was -- that was before he
20 was shot. Yes, that was before he was shot.

21 Q And did he push you before or after you told
22 him that he should get out of there?

23 A He pushed me afterwards.

24 Q In the course of your contact with
25 Mr. Phillips, am I correct in understanding that you

1 were never physically injured?

2 A Correct.

3 Q And is it your understanding during the
4 course of the contact that Mr. Abdulahad had with
5 Mr. Phillips that he was not injured either, was he?

6 MS. MILLER: Objection, but you can answer.

7 A I'm not sure. I didn't physically see any
8 injuries.

9 Q Did you ask him was he hurt?

10 A Yeah. I just asked him if he was okay.

11 Q Right. Right. And he said -- he said -- he
12 said I'm okay; didn't he?

13 MS. MILLER: Objection, but you can answer.

14 Q Your observation. You're listening --

15 A He was crying.

16 Q He says --

17 A He was crying. He is crying.

18 Q He was crying. Okay.

19 A Yes.

20 Q Did he say he was hurt in any way?

21 A No.

22 Q And you didn't see any injury on him?

23 A No.

24 Q And in the several minutes of time that it
25 took between the time of the shooting and the time

1 that the first governmental vehicle showed up, you
2 didn't see any injury on his body, did you?

3 A No.

4 Q And he never told you that he had any injury
5 to his body, did he?

6 A No.

7 Q Okay. Let's see. Now again, just before
8 Officer Abdulahad went into the car after
9 Mr. Phillips, Phillips had been standing on the
10 payment alongside the open passenger door; correct?

11 A No, I didn't see him. I didn't see him.

12 Q Okay. Let me rephrase my question because
13 I'm not sure I was clear in referencing the point in
14 time. Okay?

15 A Uh-huh.

16 Q The point in time that I'm talking about is
17 the point of time before Mr. Abdulahad goes into the
18 Malibu.

19 A Oh, okay. Yes. Yeah.

20 Q Before Mr. Abdulahad went into the Malibu,
21 Mr. Phillips had been standing on the pavement
22 alongside of the car; correct?

23 A Yes.

24 Q With a open passenger side -- front
25 passenger side door?

1 A Yes.

2 Q Okay. And as he was standing there in front
3 of you he wasn't smoking anything, was he?

4 A Correct.

5 Q And at the time -- if I read this right --
6 at the time you noticed that he was -- in your
7 words -- a small guy. A small in build.

8 A Yes.

9 Q And you looked at him using a flashlight,
10 didn't you?

11 A I don't think it was my -- I'm not sure. I
12 don't remember. I don't remember if I had a
13 flashlight. I think I did I probably had Abdulahad's
14 flashlight. I don't -- I didn't have one myself.

15 Q Okay. Well, let's touch on that just a
16 second because I don't want any misunderstanding in
17 terms of what I read or what you've read and that sort
18 of thing.

19 After the shooting, you ran back to the
20 scene of where your red car was, didn't you?

21 A Yes.

22 Q And you picked up off of the ground a
23 flashlight, didn't you?

24 A Yes, yes. Yes.

25 Q And was that a flashlight that had been on

1 your person or in your possession before the shooting
2 happened?

3 A I can't -- to be honest I can't recall. I
4 can't recall where I got the flashlight from. I can't
5 remember because I don't use to carry a flashlight on
6 me at that time. I don't -- I don't -- I can't recall
7 where I got that flashlight from.

8 Q Do you recall one way or another whether or
9 not as Mr. Phillips was standing alongside the car,
10 and again before Mr. Abdulahad had went into the car,
11 that you were able to see Mr. Phillips through the
12 illumination of a flashlight?

13 A You said I was able to see him through the
14 illumination of a flashlight.

15 Q Yeah, illumination mean that the flashlight
16 spraying up and down on him?

17 A Right. No, I didn't do that. No.

18 Q And is it your testimony -- all right, I
19 understand you didn't do that. Did anyone do it in
20 your presence? Did Abdulahad do it in your presence?

21 A He -- he may have, but I wasn't paying
22 attention to it. I wasn't paying attention to it. I
23 wasn't paying attention to -- I was paying attention
24 to the subject.

25 Q To Mr. Phillips?

1 A Yes.

2 Q Okay.

3 A Because Abdulahad was behind me and I wasn't
4 really paying attention to that. I was looking at
5 him. I was looking -- I was looking at Deaunna.

6 Q And you saw that his hands were to his side,
7 didn't you?

8 A Yes.

9 Q And you saw there was nothing in his hands.
10 You didn't see anything in his hands, did you?

11 A I couldn't see his hands at all.

12 Q When he was standing alongside the car and
13 before Mr. Abdulahad had went into the car, did you
14 take note of Mr. Phillips' hands?

15 A Yes.

16 Q All right. And what, if anything, did you
17 see in either hand at the time that he was standing
18 there?

19 A I didn't see anything in his hands.

20 Q And before Mr. Abdulahad went into the car,
21 you told him to hold him referring to Phillips, didn't
22 you?

23 A Yes.

24 Q And as of that point in time, what was the
25 charge that you anticipated making against

1 Mr. Phillips by virtue of taking him into custody?

2 A I wasn't taking him into custody. We was
3 just conducting an investigation, and I just wanted
4 him to hold him while I pull out on the radio.
5 Because I was trying to pull out on the radio.

6 Q He wasn't free to go at that point in time,
7 was he?

8 A No, he wasn't.

9 Q When you told Mr. Abdulahad to hold him, you
10 intended that Mr. Abdulahad in fact do that, hold
11 Mr. Phillips?

12 A Yes.

13 Q And Mr. Phillips was being held why?

14 A Because we smelled marijuana.

15 Q At the time that you told Mr. Abdulahad to
16 hold Mr. Phillips, there wasn't any other reason to
17 hold him other than what you just told me; is that
18 right?

19 A Yes.

20 Q That he -- that you smelled marijuana?

21 A Yes.

22 Q And I know we've had more than one time when
23 we trying to take this deposition. I appreciate your
24 cooperation in letting us reset it. With that said,
25 I'd like you to describe for us the steps you took

1 knowing you were going to be a witness testifying
2 under oath, what steps you took to get ready for your
3 deposition?

4 A I didn't take any steps. I didn't take any
5 steps actually. Because right now I'm on vacation.
6 And I was just trying to make attempts to get -- I
7 emailed Ms. Staci Miller to let her know that I didn't
8 have the link. And I just -- I practiced before to
9 see, you know, if everything was working correctly.
10 Just got up and, you know, and that was it.

11 Q But when you practiced that was this
12 morning; correct?

13 A Yes.

14 Q To make sure the link worked --

15 A Yes.

16 Q -- for the deposition?

17 A Yes.

18 Q And in addition to being certain that the
19 link worked, you had an opportunity, did you not, to
20 look over the transcript of your interview with the
21 Office of Professional Responsibility?

22 A No, I didn't.

23 Q Did you look over the transcript of -- if a
24 transcript exist -- of the interview that you had with
25 the Georgia Bureau of Investigation, Special Agent, in

1 February of 2017?

2 A No, I didn't.

3 Q Did you listen to either one of those
4 interviews?

5 A No.

6 Q And by that, I mean -- let me -- I was
7 asking you about preparing for the deposition. Let me
8 broaden it out. Have you ever heard the audio
9 recording of your interview with either OPS or with
10 the GBI?

11 A No.

12 Q Okay. I wonder if we could take just a
13 moment because this will be for identification
14 purposes, Staci. I have as exhibits -- proposed
15 exhibits to the deposition a couple of -- well, each
16 of those two audio recordings. These are the ones
17 that I believe that your office sent over to us.
18 Since I'm only doing this for purposes of
19 identification, I suppose the simple thing to do would
20 be we could play the start and finish of it. And you
21 can tell us whether you can stipulate, or if you want
22 me to, I'll ask the witness to listen and let us know
23 whether if he recognizes it. We can do it either way.
24 I just want to be able to have them as exhibits.

25 Why don't we do this then, Jeff, if you

1 could play first the OPS recording at the very
2 beginning of what I believe is this witness's
3 interview, and then advance it to the end and we will
4 see if we could expedite this identification process.

5 MS. MILLER: Are there any Bates numbers
6 associated with these recordings?

7 MR. SPEARS: The Bates numbers?

8 MS. MILLER: Yes.

9 MR. SPEARS: Not the recording itself. No.
10 I mean, not that I'm aware of. There might be
11 some entry in the Atlanta production that would
12 reflect a page number, but I don't have that.

13 MS. MILLER: Okay. I was going to see if I
14 could also locate those since you said they came
15 from us. But, we can talk about that afterwards.

16 MR. SPEARS: Okay. And if you could just
17 call out the number that we've assigned to this
18 exhibit, Jeff, before you start it.

19 MR. FILIPOVITS: Yes. So I'm playing what
20 we've marked as Exhibit 2 to the Robeson-El APD
21 Interview.WMA. I wanted to make sure everybody
22 could hear that.

23 MR. SPEARS: Yes. Although, I don't hear
24 anything yet, Jeff. Can you hear it?

25 MR. FILIPOVITS: Okay. Let me try that

1 again.

2 (Audio played.)

3 MR. FILIPOVITS: Is that audio coming
4 through?

5 MR. SPEARS: Yes.

6 (Audio continued to be played.).

7 MR. FILIPOVITS: I'm pausing there at 14
8 seconds. This is an audio recording that's 8
9 minutes and 15 seconds long. And I'm going to
10 fast forward now to 17 minutes and 35 seconds of
11 the same recording.

12 (Audio continued to be played to
13 the end.)

14 MR. SPEARS: Let me see if it's possible --
15 Staci, let me just ask you first. Do you want to
16 stipulate to that or should I ask the witness
17 more questions about it?

18 MS. MILLER: You can ask him more questions
19 about it.

20 MR. SPEARS: All right.

21 Q (By Mr. Spears) Officer, did you recognize
22 your voice on that audio recorded?

23 A Yes.

24 Q And do you recall on February 13th, 2017,
25 you were interviewed by a officer with the Office of

1 Professional Standards, Officer Half?

2 A Yes.

3 Q And during the course of that interview, you
4 understood it was being audio recorded?

5 A Yes.

6 Q And you were there in the presence of
7 your -- of your -- of an attorney, Sandra Michaels?

8 A Yes.

9 Q And in listening to -- I know it wasn't
10 long -- but in listening to what you heard, did you
11 recognize your voice?

12 A Yes.

13 Q And can you agree with us that that's a
14 recording of your interview with Officer Half? At
15 least the part you heard. I know you didn't hear the
16 whole thing?

17 A Yes. Yes.

18 Q No one is trying to pull anything on you,
19 you know. If you listened to this and you decide
20 there's something in it that wasn't you, then, you
21 know, please, let us know. But at least for purposes
22 of this deposition, let's provisionally have it
23 identified by this witness; is that acceptable?

24 A Yes.

25 MR. SPEARS: All right. Jeff, if you could

1 please go on to the next audio recording.

2 MR. FILIPOVITS: All right. This is marked
3 as Exhibit 9, eFile is GBI Interview
4 170213_0284.FP3. It's a that is 23 minutes and
5 28 seconds long. I'm going to begin playing it
6 starting at the beginning. Give me one moment.

7 Q Officer, are you able to hear it all; right?

8 A Yes.

9 Q Thank you.

10 MR. FILIPOVITS: All right. Starting at the
11 beginning.

12 (Playing audio recording.)

13 MR. FILIPOVITS: I'm pausing the recording
14 at 1 minute. I'll fast forward to -- bear with
15 me for a moment. I'll fast forward to 22 minutes
16 and 27 seconds of the recording.

17 (Playing audio recording.)

18 MR. SPEARS: So the witness can hear it
19 better, back it up before you hear the female
20 voice.

21 MR. FILIPOVITS: Okay. I'll go back to 21
22 minutes and 39 seconds.

23 (Continued playing audio
24 recording.)

25 MR. FILIPOVITS: All right. I'll pause it

1 there at 21 minutes and 55 seconds. I don't know
2 if you want any more played.

3 Q (By Mr. Spears) All right. Thank you.

4 Mr. Robeson, were you able to identify
5 your voice on that recording?

6 A Yes.

7 Q And is that -- from what you heard of that
8 recording, does that correspond with an interview that
9 you provided to Special Agent Clint Thomas of the
10 Georgia Bureau of Investigation on February 13th,
11 2017?

12 A Yes.

13 Q Okay. Have you yourself met with anyone to
14 prepare for this deposition either telephonically, by
15 Zoom, or in person?

16 A No, I didn't understand the question. Say
17 it again.

18 Q We're going back to how did you get ready
19 for the deposition. Okay?

20 A Okay. Right.

21 Q At any time, and I don't just mean this
22 morning, have you had occasion to meet with anyone to
23 prepare for your deposition?

24 A I spoke with Ms. Staci Miller prior to this.

25 Q Okay. It's understandably you want to know

1 what's going to go on and that sort of thing. So,
2 did -- was anyone else present when you met with Ms --
3 or had contact with Ms. Miller in whatever form that
4 was?

5 A No.

6 Q All right. And was that -- that was
7 telephonically or in person?

8 A Yes. Telephonically.

9 Q You have viewed, have you not, the video or
10 at least a portion of the video that captures the
11 physical movements of the cars and some of yourself
12 and the other two men that were there that night.
13 Have you not taken a look at that video?

14 A Not since -- not since the incident
15 occurred. That was in 2017. That was the last time I
16 saw it.

17 Q All right. And when you saw it, were you
18 able to view it before you had your interview with
19 either OPS or the GBI?

20 A No.

21 Q Did you -- I take it then that you were
22 allowed to view it after that?

23 A I saw it on the news.

24 Q Okay. And what -- is that the only
25 occasion -- let me rephrase the question.

1 The video that you saw on the news,
2 that's not the entirety of the video; right? It
3 doesn't show all 20 minutes or 15 minutes, whatever it
4 is?

5 A Correct.

6 Q Okay. All right. In a manner of speaking,
7 the video shows the car driving away, that kind of
8 time frame mode of activity?

9 A Yes.

10 Q Okay. Have you ever had occasion to look at
11 the entirety of the video that was turned over to the
12 GBI and made a part of their investigation?

13 A No.

14 Q It was offered to you, was it not, right
15 after your interview on February 13th, 2017?

16 A No.

17 Q When was the most recent time that you took
18 a look at the video?

19 A I think it was in 2017. I just -- I didn't
20 really look at it too much.

21 Q Right. Did you see the portion of the video
22 in which the Malibu pulls into the parking lot in
23 which Mr. Phillips was riding and then the Malibu
24 parks and a couple of folks get outside?

25 A No. No, I didn't see it.

1 MR. SPEARS: I'd like to be able to identify
2 that video if we could and to that end since part
3 of it -- and I'm just thinking out loud about
4 this, Staci, the initial part of the video that
5 we have, of course, shows -- shows the Phillips'
6 car come in and park, and then there's a far
7 amount of time that passes and then a few other
8 things happen. So I realize that it's not as if
9 he was watching that whole time, but I would like
10 just for, I guess, the sake of having the video
11 in the record to have us take a look, beginning
12 and end that we have, and see if you and I could
13 agree it can be used as an exhibit.

14 So to that end Jeff, if you could, please,
15 pull up that exhibit which is the video and start
16 at the very beginning, and then just take us to
17 the very end of it so we have a sense of its
18 length. And we'll see if we can stipulate to it
19 being a copy of the video taken by the video
20 camera that was positioned on the exterior wall
21 of the police Annex there.

22 MS. MILLER: Brian, will you be asking
23 Investigator Robeson-El any questions about the
24 video?

25 MR. SPEARS: I expect I want to show him

1 some of what are called the scene next to the
2 car. So the short answer is yes. But, the
3 portions that I'll be asking him about will be
4 when he was there.

5 MS. MILLER: Okay. And you will show that
6 portion of the video before you ask the
7 questions?

8 MR. SPEARS: Well, it depends on what he has
9 to say otherwise.

10 MS. MILLER: Okay. I will let you finish
11 your questions, then we can -- the time we watch
12 the video will be entered as an exhibit. So go
13 ahead with your questions.

14 MR. SPEARS: Okay. Well, Staci, forgive me,
15 I'm not sure the process that you were
16 anticipating. All I want to do now is see if you
17 and I can agree this is a copy of the video. The
18 method of questioning the witness, of course,
19 that will just unfold over time. I'm not -- I'm
20 not -- I have a particular sequence to the way
21 I'll be asking the questions. He says he hasn't
22 looked at it. So it's certainly not a recording
23 that refreshes his recollection in the sense that
24 he made it. So let's just see how it goes.
25 Okay? Let's see if we can agree it being a copy

1 of the video, and then we'll go back into my
2 question. Okay?

3 Jeff, if you could start.

4 MR. FILIPOVITS: Yes. So I'm playing what
5 we're calling Exhibit 1. The file name is Annex
6 Video CH07, open paren 1, close paren, dot, PPI.
7 And it's a 24-minute video. I'll be starting it
8 at the beginning. Can everyone see it on their
9 screen?

10 MR. SPEARS: Yes.

11 MS. MILLER: Yes.

12 THE DEPONENT: Yes.

13 MR. FILIPOVITS: There is no audio
14 associated with this video, so you won't be
15 hearing anything. Brian, if you want me to skip
16 ahead, just let me know.

17 MR. SPEARS: Let's see. Why don't you --
18 why don't you go to about -- let's just say 3600,
19 193600.

20 MR. FILIPOVITS: Oh, you're talking about
21 the timestamp.

22 MR. SPEARS: Yeah.

23 MR. FILIPOVITS: All right. We're starting
24 at the timestamp on the video itself or the
25 running time of the video is 2 minutes and 5

1 seconds. The timestamp in the top of the corner
2 is 193606.

3 MR. SPEARS: Okay. Why don't you -- let's
4 see, let's go ahead to say 1948 and 0 seconds.

5 MR. FILIPOVITS: All right. We're starting
6 at 194806 on the timestamp of the video, and 14
7 minutes and 5 seconds according to the run time
8 of the video.

9 MR. SPEARS: Okay. Could you, Jeff, go
10 ahead and take us to the end time of the video,
11 whatever that is.

12 MR. FILIPOVITS: All right. So we are now
13 at 195748 on the timestamp. And 23 minutes, 45
14 seconds on the run time of the video. And it's
15 going to close in 2 seconds.

16 MR. SPEARS: Okay. I wonder, can we
17 stipulate that that's a copy of the video, Staci?
18 At least provisionally for purposes of this
19 deposition?

20 MS. MILLER: Yes, we can.

21 MR. SPEARS: Thank you.

22 Q (By Mr. Spears) All right. I want to get
23 you to describe how you first met Mr. Abdulahad, how
24 long have you known him? Just give us some background
25 in that regard.

1 A I met him -- I met him a couple of times
2 prior to us becoming partners in this unit, but I
3 really didn't know him. I just, you know, saw him
4 around. He worked Zone 1, and someone that I probably
5 partnered up with knew him very well and, you know, we
6 spoke like that, but I really know him. I didn't
7 really become friends with him until he became my
8 partner when I -- when I was a part of the Gun Unit.

9 Q Was that -- was your work with the Gun Unit
10 the first time you had been partnered with
11 Mr. Abdulahad?

12 A Yes.

13 Q You said something to the effect that there
14 was someone who knew him well before you knew Officer
15 Abdulahad well. Who was that?

16 A He's no longer with the department. His
17 name was Alif Richardson.

18 Q Who?

19 A Alif.

20 Q Alif?

21 A Yes. Richardson. I assumed they worked
22 together before and they worked together in Zone -- in
23 Zone 1, but he was my partner when I was working Zone
24 4, CIU Unit. Alif was my partner and we went out to
25 eat breakfast one day, and Abdulahad pulled up with

1 his partner and the two -- those two were speaking
2 and, you know, I spoke to him. You know, that was my
3 first encounter with him, but I really didn't know
4 him.

5 Q All right. As of January 2017, how long had
6 you been partnered with Mr. Abdulahad?

7 A From the beginning of the unit. From the
8 time the unit began, he was my partner starting out.
9 And I really don't know the beginning date. How long
10 we were over there before this incident occurred.

11 Q Was it more than a couple of months?

12 A Yes. Yes.

13 Q And by being partners that meant that you
14 shared the same vehicle for purposes of carrying out
15 your duties?

16 A Yes. Sometimes -- I mean, we didn't have
17 to, but, you know, we chose to work together, you
18 know.

19 Q Okay.

20 A We just chose to ride together.

21 Q And again in the time that you were in the
22 same Gun Unit, the activities in which you engaged
23 included having an office of some kind? Some place
24 where you kept your investigative material?

25 A Yes. Well, we had a cubicle. It's like an

1 open -- open floor with a lot of desks and separated
2 by cubicles.

3 Q And where was that cubicle located? In what
4 building? Where in town?

5 A It was in the main -- it was in the main
6 headquarters building.

7 Q In coming on to work at the Gun Unit, did
8 the two of you receive any particular training
9 associated with what your tasks were going to be?

10 A No.

11 Q As between the two of you, yourself and
12 Abdulahad, had you worked with the department longer
13 than he had?

14 A No. He was working longer than I had.

15 Q He was hired before you were?

16 A Yes.

17 Q After the shooting of Mr. Phillips, did you
18 remain in contact with Mr. Abdulahad?

19 A Yes.

20 Q Did both of you continue to work in the Gun
21 Unit?

22 A No. They separated us. They sent me to
23 Zone 5.

24 Q In Zone 5 --

25 A CIU.

1 Q -- had to do?

2 A CIU, that's where I'm currently working.

3 Q Okay. And what's your understanding of
4 where Mr. Abdulahad was assigned?

5 A They kept him there.

6 Q And by there, what does that mean?

7 A In the same unit. They kept him in the same
8 unit. Kept him in the same unit, but I think he just
9 had desk duties. And then, you know, they took his
10 gun and his badge.

11 Q And you yourself you -- once you went into
12 Zone 5 you were no longer working in the Gun Unit; is
13 that correct?

14 A Correct.

15 Q So, and this transfer, these shifts in
16 assignment, they happened immediately after the
17 shooting, I take it?

18 A Yes. A short -- yes.

19 Q It was within 24 hours or thereabouts?

20 A No. It wasn't in 24 hours. It was like --
21 I would say like probably a few weeks. A few weeks
22 later.

23 Q And did you remain in contact with
24 Mr. Abdulahad after the shooting?

25 A Yes.

1 Q And in what -- how did you communicate with
2 him?

3 A We're friends. I talked to him on the
4 phone. Sometimes I go over to his house. He'll come
5 over to my house and his wife, you know. We're
6 friends.

7 Q And that -- that contact you had with him by
8 phone and seeing one another, that continued after the
9 shooting?

10 A Yes.

11 Q The communication that you had with him, did
12 it also include text messages?

13 A Yes.

14 Q And Snapchat?

15 A No Snapchat. No.

16 Q Any other messaging apps?

17 A No. We don't have any messaging apps. I
18 don't. I don't know if he do, but I don't.

19 Q And it's fair to say you continued to be
20 friends with Mr. Abdulahad --

21 A Yes.

22 Q -- up through today?

23 A Yes.

24 Q Did Mr. Abdulahad describe to you any of
25 what happened at his deposition in this case?

1 A No. We really don't try to talk about it.
2 We don't talk about it, you know.

3 Q But if -- what do mean?

4 A About the incident. We don't really talk
5 about the incident.

6 Q Is it your testimony that after the two of
7 you were separated at the scene of the shooting by
8 superior officers that you not once have spoken to
9 Abdulahad about the actual events that occurred at the
10 time of the shooting?

11 A No, we don't -- not like -- from his
12 perspective, like, I think I probably asked him like,
13 you know, was he okay, you know. Because, you know,
14 he's been taking it really hard, you know. So I kind
15 of don't like talking about it because it bothers him.

16 Q Has he provided you with any information
17 about what he observed prior to shooting Mr. Phillips
18 other than what you saw that night yourself?

19 A Yes. On the scene -- on the scene we talked
20 about it.

21 Q Okay. And by on the scene you mean that
22 night right after the shooting?

23 A Yes.

24 Q Okay.

25 A Yes. Because --

1 Q Go ahead.

2 A Yes. Because the vehicle just stopped. The
3 vehicle just stopped. He got out and he was crying.
4 And I was like: What the hell happened, you know.
5 And, you know, he went into details about what
6 happened inside the car.

7 Q Okay. And what are those details?

8 MS. MILLER: Objection.

9 A He said.

10 Q What are those details?

11 MS. MILLER: Objection. I'm going to
12 instruct him not to answer.

13 MR. SPEARS: On what ground? It's not a
14 privilege issue. On what ground?

15 MS. MILLER: It is a privilege issue for my
16 other client.

17 MR. SPEARS: All right. This witness has
18 said that when the officer who shot and killed
19 Mr. Phillips got out of the car he said something
20 to this officer. My question is: What did he
21 say. Is it your instruction that he not answer?

22 MS. MILLER: Yes.

23 Q (By Mr. Spears) Are you going to follow that
24 instruction, Mr. Robeson?

25 A Yes.

1 Q And what is the basis for the assertion of
2 this privilege?

3 MS. MILLER: So, as you are aware, my other
4 client has plead the Fifth. And this client,
5 you're asking him for hearsay from what another
6 person said who has plead the Fifth.

7 MR. SPEARS: This officer is not asserting a
8 Fifth Amendment privilege, is he? I'm entitled
9 to know one way or another. Is he asserting a
10 Fifth Amendment privilege, yes or no?

11 MS. MILLER: Is he, Robeson-El?

12 MR. SPEARS: Is Investigator Robeson-El --
13 are you instructing him to not to answer my
14 question on the basis of a privilege that this
15 witness holds?

16 MS. MILLER: That this witness holds? No.

17 MR. SPEARS: What privilege, if any, are you
18 asserting on behalf of this witness, if any?

19 MS. MILLER: Mr. Spears, I believe what
20 you're asking Mr. Robeson-El for hearsay. And if
21 that's what you are asking him for, then he can
22 respond, but I have objected to it.

23 Q (By Mr. Spears) Okay. All right.
24 Mr. Robeson, please tell me what you heard.

25 A I'm going to go along with what my lawyer

1 said. I'm going to plead the Fifth as well.

2 Q And in saying that you are going to plead
3 the Fifth, are you saying that you decline to testify
4 response to my question on the basis of your personal
5 apprehension of criminal prosecution through the words
6 that you say?

7 A I'm saying I'm pleading the Fifth because my
8 lawyer -- she objected to it, so I'm not going to say
9 anything.

10 Q As to that question?

11 A Correct.

12 Q You're still going to testify in this
13 deposition, are you not?

14 A Yes. If my lawyer like me to, I will.

15 Q When you say your lawyer, is it your
16 testimony to this court that Staci Miller today is
17 representing you in your personal capacity as a
18 witness?

19 A I mean --

20 Q Yes or no, sir.

21 A Yes, sir. I guess.

22 Q All right. And do you have any other
23 lawyers who I need to know about who are representing
24 you in any respect in connection -- either in your
25 testimony or your claim to take the Fifth?

1 A Not that I know of, no.

2 MR. SPEARS: And just so I'm clear,
3 Ms. Miller, is it your counsel to this witness
4 that he assert the Fifth Amendment in response to
5 the question that I posed -- the most recent
6 question that I posed to him?

7 MS. MILLER: My most recent comment was that
8 if you're asking him for hearsay that he can
9 respond, but I have objected to that.

10 Q (By Mr. Spears) Do you understand that,
11 Mr. Witness?

12 A Yes.

13 Q And do you understand that she is not
14 instructing you not to answer?

15 A Yes.

16 Q And do you understand that she is not
17 asserting a Fifth Amendment privilege on your part?

18 A Correct.

19 Q And she's not counseling you that you have a
20 Fifth Amendment privilege in relation to that
21 question. Do you understand that?

22 A Yes.

23 Q And is it your statement then for the court
24 that you're not going to answer the question based on
25 a Fifth Amendment privilege?

1 A Yes.

2 Q It's a fact, is it not, that Officer
3 Abdulahad never told you -- after he shot
4 Mr. Phillips -- that Mr. Phillips had a gun in his
5 hand? He never told you that, did he?

6 A He did.

7 Q And when did he tell you that he had a gun
8 in his hand?

9 A This is the same question you just asking
10 me, you asked me another way. I plead the Fifth to
11 that.

12 Q Well, sir, you've answered a question and so
13 now my question --

14 A He told me -- he told me right after the
15 accident. I mean -- you know, right after the
16 shooting when he got out of the car. He said he had a
17 gun. He said, you know, that he had a gun.

18 Q I understand. And now you've testified that
19 Mr. Abdulahad had said that Mr. Phillips had a gun. I
20 understand that. Mr. Abdulahad never told -- never
21 said the words: He had a gun in his hand, did he?

22 MS. MILLER: Objection.

23 Q Did he?

24 MS. MILLER: But you can answer.

25 Q He never said he had it in his hands, did

1 he?

2 A No. He just said he had a gun.

3 Q All right. And then of course he said, that
4 is to say, Mr. Abdulahad had said he shot the man --
5 who was lying in the car.

6 A Yes.

7 Q You didn't know what his name was at that
8 point, did you?

9 A No.

10 Q All right. But he said I shot him and he
11 said he had a gun. And he didn't tell you anything
12 else about what had happened, did he?

13 A No, not -- no. No.

14 Q Not at that time?

15 A No.

16 Q Okay. He did later, didn't he?

17 A Like shortly after -- like I said, what
18 happened. You know, what the hell happened.

19 Q All right. And what did he say?

20 MS. MILLER: The same objection, but you can
21 answer.

22 Q What did he say?

23 MR. SPEARS: You can't object based on
24 hearsay, Ms. Miller. I'm sorry. This is
25 cross-examination. And I get to ask him

1 questions that are designed as cross-examination
2 questions which include asking him matters that
3 other witnesses said at the time. And whether or
4 not it's hearsay depends on the purpose for which
5 it's being offered.

6 MS. MILLER: Right. And I can object and
7 then you can ask a question. I said he can
8 answer.

9 MR. SPEARS: That's not a formed question.
10 Just because the response may be hearsay is not
11 grounds for a form objection. And I'll ask you
12 not to continue to interrupt my questioning of
13 this witness.

14 Q (By Mr. Spears) Officer, what else did he
15 tell you at the scene that night after he shot
16 Mr. Phillips?

17 MS. MILLER: The same objection, but you can
18 answer.

19 A I plead the Fifth.

20 Q What criminal prosecution do you anticipate
21 or fear might come to you by virtue of answering my
22 question?

23 A I'm not --

24 MS. LEE: Hey, Brian. Brian, can we take a
25 quick break?

1 MR. SPEARS: Yes. We'll take 10-minute
2 break. It's not 11:31.

3 (Recess from 11:31 a.m. to 11:42
4 a.m.)

5 MR. SPEARS: Go back on the record.

6 Q (By Mr. Spears) All right. First of all,
7 Mr. Robeson, during the break that we just had, did
8 you have an opportunity to speak by telephone with
9 anyone?

10 A No.

11 Q Did you text anyone?

12 A No.

13 Q Did you receive any texts?

14 A No.

15 Q Have you let anyone know that there's a
16 break going on in which it follows your having
17 asserted a Fifth Amendment privilege?

18 A No.

19 Q Okay. Do you understand, do you not, sir,
20 that the Fifth Amendment privilege entitles someone
21 not to have their own words used against them?

22 A Yes.

23 Q All right. Is it your plan to assert the
24 Fifth Amendment privilege during any question in this
25 deposition with respect to any line of questioning

1 about which you're familiar?

2 A No.

3 Q Then we can proceed?

4 A Yes.

5 MR. SPEARS: All right.

6 MS. MILLER: Mr. Spears, about how much
7 longer do you think we have?

8 MR. SPEARS: Are you speaking of the
9 questions for this witness during this
10 deposition?

11 MS. MILLER: Yes.

12 MR. SPEARS: I have a number of other
13 questions. It will be quite a while.

14 MS. MILLER: All right. Thank you. We can
15 continue.

16 Q (By Mr. Spears) Mr. Robeson, as to
17 Mr. Abdulahad's statements to you after he shot
18 Mr. Phillips, as I recall it, you told us that he said
19 that he saw a gun and that he shot Mr. Phillips?

20 A Yes.

21 Q And you were just starting to tell us that
22 Mr. Abdulahad had said other things. And my question
23 to you is: What else did he say?

24 A He said -- he didn't really say anything.
25 He said that the guy had a gun and he said that he

1 shot him and he thinks he's dead. That's all he said.
2 And I walked up to the car. I said -- and he was
3 crying and I grabbed him. Looked in the car. I told
4 him to stand back and I'd take it from here.

5 Q Did Mr. Abdulahad say anything else to you
6 about the events that transpired inside of the car at
7 that time?

8 A No.

9 MS. MILLER: I have an objection. You can
10 answer, and you have.

11 MR. SPEARS: Well, it wasn't a form
12 objection. And I can ask him what this other man
13 said. I'll ask you, please, not to interrupt the
14 line of questioning. That's not a form
15 objection. It's not a privilege assertion. I
16 don't understand what that is for other than just
17 to interrupt.

18 MS. MILLER: Mr. Spears, I have my
19 objection. You have your question. We can
20 continue.

21 MR. SPEARS: All you have to say if it's a
22 form objection. Because all others, of course,
23 are reserved unless you make a privilege
24 objection on behalf of this witness. All you
25 need to say is form. If you want to make a form

1 objection, that's what we're allowed to do during
2 the course of these depositions, just say form.

3 MS. MILLER: Mr. Spears, I'm not going to
4 tell you how to ask your questions. So please
5 don't tell me how to object. Please continue.

6 MR. SPEARS: All right. I won't tell you
7 how to object --

8 MS. MILLER: Thank you.

9 MR. SPEARS: -- since I'm not favorable of
10 you objecting so much to interrupt my
11 questioning.

12 Q (By Mr. Spears) Mr. Robeson.

13 A Yes.

14 Q At any time after -- after other persons
15 arrived at the scene of the shooting, did
16 Mr. Abdulahad say anything else in your presence that
17 described any of the events that occurred inside of
18 the vehicle at or around the time that he shot and
19 killed Mr. Phillips?

20 MS. MILLER: Objection, but you can answer.

21 A No. They separated us.

22 Q Okay. I understand that. Did you hear him
23 talking to anybody else about what happened? Yes or
24 no.

25 A No.

1 Q Did he tell anybody else in your hearing
2 what led up to the shooting?

3 A No. I don't know who he spoke with. I
4 mean, like I said, they separated us.

5 Q Right now I don't care who he talked to.
6 I just want to know if you heard him say anything
7 else?

8 A No. No.

9 Q And is it your testimony you didn't hear him
10 say anything more about what happened and why he shot
11 Mr. Phillips; is that your testimony?

12 A Yes.

13 Q It's the case then that Abdulahad never told
14 you that Mr. Phillips was reaching for a gun, did he?

15 A No. He just said he had a gun.

16 Q And he never told you that he,
17 Mr. Abdulahad, saw a light pole ahead of him as he and
18 Mr. Phillips were traveling in the car? He never told
19 you that, did he?

20 A No. But I saw it.

21 Q In 2017, you were investigated by the Fulton
22 County District Attorneys Office, were you not?

23 A Yes.

24 Q And there was a search warrant issued that
25 resulted in the seizure of your cellphone at that

1 time; correct?

2 A Yes.

3 Q And that investigation has concluded, has it
4 not?

5 A I don't know. I never got my cellphone
6 back. They said they lost it.

7 Q Did you -- who said that they lost it?

8 A I called to try -- I called for the
9 whereabouts of my cellphone and they told me they
10 don't have it.

11 Q And where did you call for your cellphone?

12 A I called the D.A.'s office.

13 Q And do you recall who you spoke to?

14 A No. No. I don't know who --

15 Q Was it the same person -- well, was it --
16 was it the same person who seized your cellphone?

17 A I don't know who took it. Because it was
18 like different agencies that came in. It was GBI and
19 the D.A. offices. I didn't know who belonged with
20 who. And my chef, and they just told us we had to
21 turn them over. I don't know -- and they gave us a
22 search warrant for our car and our phone and that was
23 it. They didn't explain nothing. They told it. And
24 I asked my lawyer. She didn't know. So I don't know.
25 They didn't tell us anything.

1 Q And that lawyer, was that Sandra Michaels
2 again?

3 A Yes.

4 Q Have you ever seen or been told what the
5 results were of the search of the contents of your
6 cellphone?

7 A No.

8 Q When was the last time that you sought
9 information about the location of your cellphone?

10 A When they took it -- the last time they took
11 it they said they were only to keep it for a day or
12 two. And I called like -- I called two days later. I
13 gave them two days, and they said that, oh, it's going
14 to take a little longer. And then I called like a
15 week later and no one -- I didn't get anything. So I
16 don't know. It's been a long time.

17 Q Your cellphone was taken from your
18 possession more than once; is that what you're telling
19 us?

20 A No. It was only taken one time. They never
21 returned it. They've been telling me -- like telling
22 me anything. Like, basically just keeping my phone.
23 And they didn't tell me anything. I don't know where
24 my phone is. I don't know what they got from my
25 phone. I don't know anything.

1 Q Between the shooting and the time that your
2 phone was taken, that was some number of months; am I
3 correct?

4 A Yes.

5 Q Your phone was taken -- excuse me. Your
6 phone was taken from your possession in September of
7 2017; correct?

8 A Around that time, I assume.

9 Q And it was taken pursuant to a warrant that
10 was obtained by members of the Fulton County District
11 Attorneys Office; correct?

12 A Yes.

13 Q And you were served with a copy of that
14 warrant, were you not?

15 A Yes.

16 MR. SPEARS: Jeff, if we could just take a
17 minute, please, and pull up a copy of that
18 warrant.

19 MR. FILIPOVITS: Just stand by one second.

20 Q (By Mr. Spears) All right. Let the record
21 reflect we're looking at now what has been identified
22 as Plaintiff's Exhibit 11 to this deposition.

23 If you will, Mr. Robeson, please take a
24 look at that page, and I'll ask Jeff to scroll from
25 page 1 through the other pages. There's a total of

1 27, but I think we'll be glad to go at whatever pace
2 you want, sir.

3 MR. FILIPOVITS: Just tell me when you want
4 me to scroll through the next page, Mr. Robeson.

5 Q Do you see that page, sir?

6 A Yes.

7 Q All right. Can we go on to the next page?

8 A Next page. Next.

9 Q You see what is marked as affidavit for
10 search and seizure this third -- excuse me, this
11 fourth page of the exhibit?

12 A Yes.

13 Q Next page. And 6, 7, 8, 9, 10, 11, 12, 13,
14 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26,
15 27.

16 Mr. Robeson-El, do you recognize that
17 as a copy of the warrant, the supporting affidavit,
18 and the order sealing the original document?

19 A Yes.

20 Q Now, according to the terms for application,
21 when Mr. Phillips was found shot dead in the car the
22 engine to the Malibu was still running. Do you have
23 any information about what you're familiar either from
24 your own personal observations or otherwise, that is
25 contrary to that observation?

1 A No, I just don't.

2 Q All right. And respect to the observation
3 in the search warrant application that the gear shift
4 was in park, do you have any information from any
5 source to the effect that that observation is
6 incorrect?

7 A I don't know anything about it being in
8 park.

9 Q And the search warrant application also
10 declares that when Phillips was found shot and dead in
11 the car that the parking brake was engaged. My
12 question to you is whether you have any information
13 from any source received at any time contrary to that
14 observation?

15 A No.

16 Q Is it your understanding that once
17 Mr. Abdulahad had fired his weapon inside of the car,
18 that he personally never touched anything other than
19 getting out of the car?

20 A I don't know. I don't have no knowledge.

21 Q Are you aware of any facts whatsoever to the
22 effect that Mr. Phillips was not the person who put
23 that transmission into park?

24 A I have no knowledge. I don't know. I don't
25 know who did it.

1 Q Do you have any information whatsoever
2 contrary to the position that Mr. Phillips engaged the
3 emergency brake inside of that car at the time that
4 the car stopped?

5 A No.

6 Q Do you have any -- just from your own
7 perspective -- any opinion about how the transmission
8 was placed into park at a time before Mr. Abdulahad
9 exited the vehicle?

10 A No. Because when they -- I just saw them
11 tussling -- I saw -- I could -- I was keyed in on the
12 tag of the car. That's it. I was just looking at the
13 tag of the car. I was trying to get the tag of the
14 car out. Tried to put it out over the radio. I
15 really couldn't see much. And then I saw the car
16 stop. I thought it was going turn out, but it went
17 straight. And it started going straight, then it
18 stopped. I didn't -- I didn't know what happened.
19 And why it stopped. I didn't know anything.

20 Q Okay. My question at this point is
21 something different from what you actually saw. My
22 question at this point is: What opinion do you have
23 about what caused the vehicle to stop? Who did what
24 to bring it to a stop? What's your opinion?

25 A I think that my opinion -- I'm thinking

1 Abdulahad probably pulled the emergency brake up to
2 try to stop the car while the guy was driving. I mean
3 that's my only opinion. Yeah.

4 Q Prior to the car stopping, you didn't hear
5 any gears engaged such as one would hear say when, you
6 know, in a manual transmission you're trying to go
7 from one gear to another without fully engaging the
8 clutch. You didn't hear any such sound, did you?

9 A No. I had tunnel vision on the tag.

10 Q I'm asking what you heard right now. I'm
11 not asking what you saw. Do you understand that?

12 A I understand.

13 Q All right. And you did not hear, did you --

14 A No.

15 Q -- any grinding of gears before the car
16 stopped?

17 A No.

18 Q So howsoever it ended up in park, it ended
19 up in park without any forcing of the lever while the
20 car was still moving; correct?

21 A I didn't hear anything. I couldn't tell you
22 that, sir.

23 Q But you do understand, do you not, that if
24 you try to put a car in park while it is still moving
25 the gears will cause a sound; you understand that, do

1 you not?

2 A I understand that. And I understand that --
3 do you understand if you see tunnel vision sometimes
4 you can't hear. You just see.

5 Q I don't know what you saw or didn't see,
6 sir, and I'm not asking you for an explanation of
7 tunnel vision. You've used that phrase a lot now.

8 A Right.

9 Q I understand that you've used it a lot.

10 A Right.

11 Q And your testimony then still remains you
12 heard no gear sound whatsoever before Mr. Abdulahad
13 got out of the vehicle after he had shot Mr. Phillips;
14 that's your testimony, isn't it?

15 A Yes.

16 Q The car in which Phillips and Mr. Abdulahad
17 were riding came to a complete stop before
18 Mr. Abdulahad got out; correct?

19 A Yes.

20 Q Describe the tussling that you saw inside
21 the vehicle as it was driving away from you.

22 A As it was driving away, all I saw was he
23 grabbed -- when I passed him off to Abdulahad, they --
24 they tussled a little bit and then he got loose from
25 Abdulahad and jumped in the car. He went in behind

1 him. And I thought Abdulahad was going to come out of
2 the car. But the next thing, you know, I just see the
3 car pulling off and he was in it. I thought he was
4 going to get out. And they just pulled off.

5 Q Mr -- excuse me, please go ahead.

6 A Excuse me?

7 Q I didn't mean to interrupt you, sir. Please
8 continue with your answer.

9 A Yes. That's the only tussle that I saw,
10 like when he grabbed him. He looked like he was
11 trying to get loose from Abdulahad. Then he did get
12 loose and then he jumped into the car. And Abdulahad
13 went into the car to try, I guess, to try to grab him
14 again. You know, I thought Abdulahad was just going
15 to back out and the car was just going to speed off.
16 But he stayed in the car and the car pulled off with
17 him -- with him in it. I didn't see anything else
18 after that.

19 Q What tussling did you see going on in the
20 interior of the car after Abdulahad had -- let me
21 rephrase the question.

22 There came a point in time as the car
23 left the parking slot that it was in that
24 Mr. Abdulahad was inside of the car; right?

25 A (Nods head.)

1 Q Okay. And what you could see is the car
2 moved away from your location. What physical activity
3 did you see Mr. Abdulahad engaged in?

4 A I really couldn't see. I couldn't see. It
5 just looked like he was on his knees.

6 Q On his knees in the interior of the car;
7 correct?

8 A Correct, yes.

9 Q No part of Mr. Abdulahad's feet were on the
10 ground as the vehicle was leaving your presence;
11 correct?

12 A Correct.

13 Q His body was entirely inside of the car as
14 he was leaving your presence; correct?

15 A Yes.

16 Q He was not being dragged along on the
17 ground, was he?

18 A No, I didn't see that. No.

19 Q And in fact, the car door -- the passenger
20 side door in to -- through which Mr. Abdulahad had
21 gained access to the car, that door was fully closed
22 as the car drove away from you; correct?

23 A Yes.

24 Q You have been informed of the fact, have you
25 not, that the gun found on the floor of the Malibu did

1 not contain any DNA from Mr. Phillips? You have been
2 informed of that, have you not?

3 A No.

4 Q Have you received any information whatsoever
5 about the results of the testing done on that gun?

6 A No.

7 Q Other than that it was -- that you saw it on
8 the floor of the Malibu. You were unaware of any
9 connection whatsoever between that gun and
10 Mr. Phillips; correct?

11 A Correct.

12 Q The City of Atlanta has certain standard
13 operating procedures with respect to investigations
14 into officer misconduct; correct?

15 A Yes.

16 Q And would you agree, would you not, that
17 among those standard operating procedures there is one
18 by which you are prohibited from contacting a
19 complaining witness or a witness concerning
20 allegations of police misconduct?

21 A Yes.

22 Q You're also aware, are you not, that where
23 there is an officer involved shooting, including a
24 shooting that results in injury or death, the
25 witnesses to that incident are both to stay around and

1 are to be told not to discuss the incident with one
2 another?

3 A Correct.

4 Q And you were told, were you not, on that one
5 and same night as when Mr. Phillips was shot, that you
6 were not to discuss the shooting with any other
7 witnesses?

8 A Correct.

9 Q And you knew that you were not to contact
10 other witnesses; correct?

11 A Yes.

12 Q Do you remember your interview with Atlanta
13 Police Department Investigator Half about the Phillips
14 shooting, you were asked if you had spoken with anyone
15 about the incident other than the GBI; do you recall
16 that?

17 A I don't remember, but maybe.

18 Q Do you recall that you responded to Half's
19 question by saying no?

20 A No.

21 Q Do you recall that?

22 A No.

23 Q Do you agree or disagree with the fact that
24 Mr. Abdulahad had called you a total of six times on
25 the day after the shooting using his cellphone and

1 sent you a total of nine text messages between
2 January 27th and January 28th of 2017?

3 A He may have, but, you know -- you know, he
4 may have. I am not aware. But, you know, we talk all
5 the time. We're friends. We share the same religion,
6 you know. You know, we're friends.

7 Q Is it fair to say that you do not deny that
8 recounting of the number of times of phone contact and
9 text context is correct; you're not denying that?

10 A Yes, I'm not denying it.

11 Q Can you tell us, please, what you talked
12 about when Abdulahad called you the day after shooting
13 Mr. Phillips?

14 A No, I don't remember.

15 Q Did you talk at all about what happened?

16 A No.

17 Q Or why?

18 A Because we didn't -- not only did they tell
19 us not even to talk about it. It just wasn't a --
20 it's just not a conversation that we wanted to talk
21 about. You know, it was just an uncomfortable --
22 uncomfortable situation.

23 Q But you also knew you were not to have
24 contact with witnesses involving the allegation, but
25 you were having that very contact with Mr. Abdulahad,

1 were you not?

2 A Yes. We were still working together.

3 Q And you understood, did you not, in the wake
4 of the shooting, that the SOP and the City of Atlanta
5 Police Department called for you not to have contact
6 with witnesses to the shooting which included
7 Mr. Abdulahad? You understood that?

8 A Yes. Yes.

9 Q And you decided that you were simply not
10 going to follow that SOP?

11 A We were still working together. We were
12 still partners at that time. We were still in the
13 same unit. They didn't move me until months after.

14 Q The answer to my question then, you decided
15 you were going to continue to have contact with him;
16 correct?

17 A Yes.

18 Q In the days between the shooting and
19 February the 13th of 2017, when you were
20 interviewed, there came a time when you had a call of
21 over 30 minutes with Mr. Abdulahad. Do you recall
22 that?

23 A No.

24 Q Do you deny it?

25 A No.

1 Q Do you agree or disagree that in the time
2 from the date of the shooting until the date of your
3 interviews with the GBI and OPS that you and
4 Mr. Abdulahad engaged in 14 telephone calls totaling
5 over an hour and engaged in 28 text messages until
6 February 13th, 2017. Do you agree or disagree with
7 that?

8 A I agree.

9 Q Did you keep all those text messages?

10 A I don't have my phone. I can't recall. I
11 don't know. They took my phone.

12 Q Did you delete any of those text messages --

13 A No.

14 Q -- at any time?

15 A No.

16 Q So is it your testimony that if an analysis
17 was done of your text messages resident on that phone
18 after the seizure of your phone in September of 2017,
19 that all the text messages that we see on your phone
20 records are going to be there on that phone or on the
21 evaluation done on that phone?

22 A Absolutely.

23 Q Do you agree or disagree that during your
24 interview with Investigator Half of OPS that you were
25 instructed not to communicate with other witnesses?

1 A Yes.

2 Q And that was on February the 13th, 2017?

3 A Yes.

4 Q And after that time you continued to have
5 communication both by telephone and by text with
6 Mr. Abdulahad; correct?

7 A Yes.

8 Q What gave you the authority to disobey
9 Mr. Half's instruction to you?

10 A Because we were still working together.

11 Q Your testimony is that as of
12 February 13th, 2017, that you were still partners
13 with Mr. Abdulahad; is that your testimony?

14 A Yes. I think we were still partners at the
15 time. I can't recall, but we were -- we were still
16 working together.

17 Q Okay. And let's see. You were told by
18 Investigator Half that except as authorized or
19 required, employees could not interfere or contact the
20 persons involved in an internal investigation. You
21 understand that you were told that?

22 A Yes.

23 Q And you understood that as of at least of
24 February the 13th, 2017, that there was an internal
25 investigation that was being conducted by the City of

1 Atlanta Police Department into the Phillips shooting?

2 A Yes.

3 Q And you made the decision to go ahead with
4 further communications with Mr. Abdulahad?

5 A Yes.

6 Q As did he obviously?

7 A Yes.

8 Q Do you have any reason to deny the fact that
9 between the date of your interviews: February 13th,
10 2017 and September 7th of 2017, that there were a
11 total of 55 calls and 108 text messages between
12 yourself and Mr. Abdulahad?

13 A No, I'm not aware.

14 Q But you had the communication. Are you
15 denying that's the number?

16 A No, I'm not denying that. I just don't know
17 the number.

18 Q You are aware, are you not, that after the
19 shooting of Mr. Phillips that the Atlanta Police
20 Department issued a statement to the effect that
21 Mr. Abdulahad fired his weapon killing Mr. Phillips
22 while Mr. Abdulahad was halfway in the vehicle? You
23 understand that, do you not?

24 A Yes, I understand.

25 Q But that is not what you saw happen, is it?

1 A I didn't see him fire his weapon. I saw him
2 inside the vehicle. That's what I saw.

3 Q You saw it and he was fully inside the
4 vehicle before the vehicle stopped; correct?

5 A Correct.

6 Q And at the time that you saw him fully
7 inside the vehicle, Mr. Phillips was not yet shot, was
8 he?

9 A Correct.

10 Q So he was shot after Mr. Abdulahad was fully
11 inside the vehicle; correct?

12 A Yes.

13 Q So when you heard the announcement from the
14 City of Atlanta Police Department to the effect that
15 Mr. Abdulahad had fired his weapon and killed
16 Mr. Phillips while Mr. Abdulahad was still halfway in
17 the vehicle, you understood that that was not a
18 correct description of what had happened?

19 A Correct.

20 Q What step, if any, did you take to alert any
21 officer either in your chain of command or involved in
22 the internal affairs investigation or the GBI, that
23 that claim that had been put out by the APS was
24 incorrect?

25 A I actually -- I never saw it in writing. I

1 mean it was just hearsay. I don't know, it was in the
2 open investigation. I was told not to talk about it.

3 Q All right. I don't care whether -- I don't
4 care how you heard about it, sir, you knew that was
5 what was being put out into the press about what
6 happened and you knew it wasn't true. My question is:
7 What step did you take, if any, to alert investigating
8 officers -- who you knew you could talk to because
9 they were investigating it -- what steps did you take
10 to alert them to the fact that was not accurate? Any?

11 A None.

12 Q After the interview that you had or as part
13 of the interview that you had with the GBI
14 investigator about the shooting, you prepared a sketch
15 for him, did you not?

16 A I don't remember -- I don't recall.

17 Q That's fine.

18 MR. SPEARS: Jeff, if you could, please,
19 pull up the proposed exhibits for this witness's
20 deposition and go to that which starts with --
21 let me see if I can find it. Actually, this is
22 Exhibit 10, the awareness statement and sketch.
23 If you could please pull that up.

24 Q (By Mr. Spears) Let me the record reflect we
25 are now looking at Plaintiff's Exhibit 10 to this

1 deposition, which is a 2-page document. You would
2 have seen the first of those two pages, sir?

3 A Yes.

4 Q All right. And do you see it's entitled
5 Atlanta Police Department Awareness Statement,
6 Truthfulness that business up there at the top?

7 A Yes.

8 Q And you recognize your signature there below
9 the typewritten words below, El Malik Robeson-El?

10 A Yes.

11 Q And just so we are clear about this. This
12 is the form that you signed off on on the day of your
13 interview with Investigator Half with the City of
14 Atlanta Office Professional Standards; correct?

15 A Yes.

16 Q And the second page, could we take a look at
17 that?

18 All right. And do you see what's in
19 front of us now that's in the lower left-hand corner
20 that's entitled Exhibit A?

21 A Okay.

22 Q Do you recognize that as a copy of the
23 sketch that you drew for Investigator Half?

24 A Yes. I mean -- yes.

25 Q Okay. And it shows, let's see, it shows, as

1 I recall the -- you see the initials B and there's an
2 initial A?

3 A Uh-huh.

4 Q All right. And the lower of the two
5 locations marked with B that in your interview with
6 Half, that is more or less is what you used to
7 characterize where you were when the vehicle pulled
8 away; correct?

9 A Yes.

10 Q And the second B, further up on the page,
11 you wrote that there to indicate about where you were
12 when the car stopped; correct?

13 A Yes.

14 Q All right. And the A that stands for where
15 the car stopped; correct?

16 A Yes.

17 Q Abdulahad got out of the passenger side,
18 didn't he?

19 A Yes.

20 Q And were you able to even see the driver
21 side of the car from where you stood at this second
22 position B in the middle of the page?

23 A Not -- not really.

24 Q All right. When you went up closer to -- I
25 take it you went up closer to the car at some point;

1 correct?

2 A Yes.

3 Q And you did that after you had contact with
4 Abdulahad?

5 A Yes.

6 Q All right. And did you circle the car? Did
7 you walk all the way around it?

8 A No.

9 Q So you only saw it from the -- you only
10 observed the car from the passenger side?

11 A Yes.

12 Q Does -- in terms of what you observed that
13 night after the shooting, you made no observation of
14 how the front driver side door had been opened, did
15 you?

16 A No.

17 Q And sitting here today you cannot deny, can
18 you, that the driver side door, the forward driver
19 side door of that car had been opened at a time before
20 Mr. Abdulahad got out of the car? You cannot deny
21 that, can you?

22 A I had no knowledge of it.

23 Q But you don't deny it, do you?

24 A Correct.

25 Q Earlier you told me that you have no

1 recollection of hearing the discharge of the weapon
2 that killed Mr. Phillips. How can you explain the
3 fact that a witness further away from the car than
4 you, who was in the parking lot, clearly heard the
5 shot?

6 MS. MILLER: Objection, but you can answer.

7 Q Explain that for us, please.

8 A I didn't hear anything. I was -- I was
9 looking at the tag and I was trying to communicate
10 over the radio to put the information out over the
11 radio.

12 Q As the car was moving away from you, you are
13 aware of fact, are you not, that there is no record of
14 radio communication between you and anyone at dispatch
15 as the car was driving away? You are aware of that
16 fact, are you not?

17 A Yes I -- yes, I believe so.

18 Q All right. So you were not in communication
19 with anyone with dispatch as the car drove away from
20 you, were you?

21 A The station had changed during the tussle.
22 I had the radio in my hands squeezing it trying to
23 communicate over the radio. But I didn't know they
24 didn't -- that I wasn't on the correct channel until
25 everything had stopped.

1 Q How does one change the channel on that
2 radio?

3 A Because it's a lot of different buttons on
4 the radio.

5 Q I'm asking you how it's done. I understand
6 there's buttons on it, sir. How is it changed?

7 A I changed --

8 Q By -- you changed the channel?

9 A You can change the channel by the knobs on
10 the top or some buttons on the front -- on the front
11 screen of the radio.

12 Q Okay. All right. And -- and the only
13 person who had physical possession of that radio
14 between the time that you pulled into the parking slot
15 in which your red car placed itself and the time that
16 Mr. Phillips was shot, the only person who had
17 possession of that radio was you; correct?

18 A Yes. Yes.

19 Q The only person who could have changed the
20 channel in that period of time was you; correct?

21 A False.

22 Q Who put their hand in your pocket? Are you
23 telling me that Mr. Phillips put his hand in your
24 pocket while you were standing there?

25 A I said that I took the radio out to put out

1 on the radio because I asked Abdulahad to hold him.
2 And this is the reason that I asked him to hold him so
3 I can put out on the radio. But when I go to attempt
4 to key up he tried to come through me. That's when
5 the kid tried to come through me. He tried -- that's
6 when -- that's when the pushing came. So I pushed --
7 I held him back with one hand and said, Abdulahad,
8 grab him so I can put out on the radio. And, you
9 know, everything took place after that.

10 Q And Mr. Phillips never had the radio in his
11 hand, did he?

12 A He never had the radio in his hand. I had
13 it in my hand.

14 Q You were the only person who had possession
15 of that radio?

16 A Yes.

17 Q Right. The only person -- so the only
18 person whose movements could have changed the station,
19 the communication channel was you; correct?

20 A Listen, false. I just told you. He must
21 have changed when he pushed -- when he was doing an
22 altercation between him and I, he must have pushed the
23 radio because I had my radio in one hand and I had him
24 with the other hand.

25 Q Okay. And how does that mean that pushing

1 your body means that his hand moved the channel on
2 your radio?

3 MS. MILLER: Objection, but you can answer.

4 Q Physically how does that happen?

5 A He could have pushed one of the buttons on
6 the front of the screen.

7 Q You didn't see that happen, did you?

8 A No, I didn't.

9 Q And you didn't feel that happen, did you?

10 A Wasn't aware of it.

11 Q How much noise does it make when you change
12 the channel on your radio?

13 A You really can't -- you really can't hear
14 it. It's a small -- a small tone. A really light
15 tone. You really can't hear it.

16 Q So when you changed the channel --

17 A Depending on the volume.

18 Q When you change the channel on your radio it
19 doesn't make much noise; correct?

20 A No. It depends on the volume.

21 Q Right. So the changing of the channel on
22 your radio would not have interfered with you hearing
23 the gunshot, would it?

24 A No.

25 Q On the day of January the 26th, 2017, where

1 did you start your shift?

2 A At headquarters.

3 Q And were you with Mr. Abdulahad when you
4 started your shift?

5 A Yes.

6 Q Describe for me, please, what your
7 activities were during that day prior -- excuse me,
8 prior to contact with Mr. Phillips?

9 A We punched into work and we had -- we all --
10 we had cases that we had to investigate -- finish
11 investigating. We got warrants for -- we got warrants
12 for our case. And then we was just trying to get the
13 warrants closed out by the end of the day. So we
14 was -- we was really trying to rush so we could get
15 off work on time. And, you know, we -- that was
16 pretty much it as far as I can remember.

17 Q What, on that date, would have been the
18 closeout time for your shift?

19 A Yeah. We got off at 12:00 o'clock.

20 Q Twelve midnight?

21 A Yes.

22 Q Were you on 12-hour shifts?

23 A No. We worked -- it was 4:00 to 12:00. We
24 were on evening watch.

25 Q Did you make any physical arrests that day?

1 A No.

2 Q I think you told us earlier that there were
3 a couple of warrants that you had prepared. What do
4 you remember -- do you remember what the subject of
5 those warrants happen to be; that is, to say what the
6 offense was for which you were seeking a warrant?

7 A No, I don't remember the subject. But it
8 was for aggravated assault. For aggravated assault.

9 Q Was it one incident of aggravated assault or
10 more than one?

11 A I can't recall. I don't know.

12 Q Excuse me.

13 A I don't know. I don't know whether it
14 was -- I had a case and he had one as well. I'm not
15 sure. I think it was his case because we was joint --
16 I was a coinvestigator on -- we were coinvestigators
17 on each case -- on each other's cases.

18 Q All right. And when you took the step to
19 prepare an affidavit for a warrant, what log or record
20 did you maintain that reflected that you had prepared
21 an affidavit in a given case?

22 A Case notes. We have case notes that's put
23 into ICCS. And we also maintain a case file.

24 Q Is there a -- or at that time was there a
25 way in which you separately kept track of how many

1 warrants you were applying for in any given day?

2 A No. Our supervisors -- I think our
3 supervisors kept a tally of that.

4 Q Did you have to have a supervisor
5 authorization for securing a warrant before you sought
6 it?

7 A No.

8 Q What was the basis of information for your
9 supervisor being able to prepare and maintain a tally
10 of your warrant applications?

11 A We would give him a copy of our search
12 warrants -- I'm sorry. Give him a copy of our arrest
13 warrants.

14 Q And was that copy one that would be provided
15 to them before or after it was executed?

16 A Before.

17 Q And would it be provided to them before or
18 after it was signed on off by the magistrate?

19 A After.

20 Q You used the phrase that the warrant, I
21 believe you said, that the warrant would be put into
22 ICCS, is that what you said?

23 A No. I said we will put our -- put
24 information into ICCS into our case notes. Get all
25 the information that we place.

1 Q But, can you tell us, please, what the ICCS
2 stands for?

3 A No. I don't know what it stands for.

4 Q What function does it serve? Is it some
5 sort of database of information about your cases?

6 A Yes. It's report. It was a report writing
7 system that was used -- we don't use it anymore. But
8 at that time we use it to, you know, conduct reports
9 and maintain our case files and how we generate our
10 cases. And how -- a system is set up to basically
11 maintain all our reports and case files.

12 Q In February of 2017, did you prepare daily
13 activity reports?

14 A No.

15 Q Are you familiar with daily activity reports
16 prepared by field officers?

17 A Yes.

18 Q Okay. What reporting process did you use to
19 summarize your daily activities, if it was not a daily
20 activity report?

21 A Well, as officers they used, you know, the
22 daily activity when they're putting out on calls. But
23 as a investigator, we place our notes inside a case
24 management and our case management is set up through
25 ICCS. So all the work we did that day we would

1 document it. We would document it and save it, and
2 our supervisors would review it.

3 Q And in terms of your performance, your
4 supervisors being able to assess your performance,
5 what was your understanding of the base of information
6 that they used in order to generate those performance
7 evaluations?

8 A Our case clearances, they would look at, you
9 know -- would look at our case clearance and overall
10 performance such as attendance and, I guess, how well
11 we work with others. And, you know, tardiness.
12 Things like that.

13 Q Did they also look at the number of warrants
14 that were generated by virtue of your activity?

15 A Yes. That's what I say, case clearances.

16 Q Oh, okay. So a case clearance refers to, I
17 guess, your stage of that case being concluded;
18 correct?

19 A Yes, just exhausting all our leads.

20 Q Okay. And you would also receive -- your
21 evaluation would also have a relationship to the
22 number of arrests that were made by you?

23 A We don't make arrests. We just do an
24 investigation. So it was mainly, like I said,
25 basically they would give us an evaluation due to like

1 us exhausting all of our leads because sometimes may
2 not -- your investigation may not lead up to an
3 arrest, because you don't have enough evidence or, you
4 know, but you exhausted all your leads. And however,
5 you know, and if you're doing what you're supposed to
6 do, you'll have -- you're organizing your case
7 management you would be able to -- you would be able
8 to, you know, do what you're supposed to do. So I
9 guess that's how you evaluate us on performance.

10 Q The warrants that you sought, were those
11 primarily warrants alleging felony criminal acts?

12 A Yes.

13 Q The same for misdemeanor?

14 A No. We only handle aggravated assaults with
15 shootings.

16 Q Okay. All right. Let's see. On going back
17 to the night of the shooting, while Officer Abdulahad
18 was -- I think you said you saw him -- it appeared to
19 be he was on his knees inside the interior of the
20 vehicle as the vehicle left your presence?

21 A Yes.

22 Q Okay. And as the vehicle left your presence
23 and before the car stopped, did you see Abdulahad pull
24 his gun out of the holster?

25 A No.

1 Q Did you see what Phillips was doing other
2 than operating the car right before he was shot?

3 A No.

4 Q Did you see Mr. Abdulahad pointing the gun
5 at Mr. Phillips' head before the gun was fired?

6 A No.

7 Q Did you see how far Abdulahad's gun was from
8 Phillips before it was fired?

9 A No.

10 Q You didn't see Abdulahad holding onto to
11 anything in the interior of the car before he fired
12 his gun, did you?

13 A No.

14 Q Did you ever hear Abdulahad tell Phillips to
15 stop the car?

16 A No.

17 Q Did Abdulahad ever tell Phillips not to get
18 out of the car?

19 A No.

20 Q Did Abdulahad ever tell you that he saw a
21 gun before he shot Phillips?

22 A No.

23 Q He never told you that Phillips had reached
24 for a gun before he shot him, did he?

25 A No.

1 Q What is your understanding of why
2 Mr. Abdulahad did not get out of the car before he
3 shot Mr. Phillips?

4 MS. MILLER: Objection, but you can answer.

5 A I don't know.

6 Q What is your opinion about why he didn't get
7 out of the car?

8 MS. MILLER: Objection, but you can answer
9 if you know.

10 MR. SPEARS: Please don't say if you know.
11 It coaches the witness to not answer the
12 question. I ask that you not use that phrase.
13 If you have an objection, just say objection.
14 Don't tell him: If you know. I know from
15 experience that's a signal not to answer.

16 MS. MILLER: I'm not saying knowing or
17 coaching anything. I'm just making my objection.

18 MR. SPEARS: Just make the objection and
19 don't say: If you know.

20 MS. MILLER: Investigator Robeson, you can
21 answer.

22 A I don't know.

23 Q Not asking what you know now, sir. I'm
24 asking for your opinion. What is your opinion as to
25 why Mr. Abdulahad did not simply get out of the

1 vehicle before he shot and killed Mr. Phillips?

2 MS. MILLER: Same objection, but you can
3 answer.

4 A My opinion he probably -- because he
5 committed himself already inside.

6 Q And by he, you're referring to
7 Mr. Abdulahad, he committed himself already?

8 A Yes. He committed himself already. And so,
9 I guess, he just went on with it. That's my opinion.

10 Q Given what you've told us as to what you did
11 not see in the car immediately before the shooting,
12 would you agree with me that you do not have an
13 opinion one way or another whether Abdulahad was
14 justified in shooting Phillips?

15 A I agree.

16 Q The state [sic] of Atlanta has certain
17 standard operating procedures with respect to the use
18 of deadly force; correct?

19 A Yes.

20 Q Certain parameters in terms of when it's
21 justified and not justified, that sort of thing;
22 correct?

23 A Yes.

24 Q There's also training that you receive on an
25 annual basis with respect to firearm proficiency;

1 correct?

2 A Yes.

3 Q In order to maintain your arrest authority
4 and the authority to carry a firearm with you while
5 you're on duty, you have to maintain that certain
6 proficiency on an annual basis; correct?

7 A Yes.

8 Q With respect to the City of Atlanta's
9 standard operating procedure on the use of deadly
10 force, you understand, do you not that the
11 department's policy provides that officers are not to
12 fire at moving vehicles?

13 A Yes.

14 Q And that's a standard operating procedure
15 that was in place both before and after Mr. Phillips'
16 death?

17 A Yes.

18 Q And would it be fair to say that you never
19 received any training on a safe way to shoot someone
20 while they're driving a car while you're in it?

21 A A safe way to drive a car while you're in
22 it. No. We haven't received any training on that,
23 no.

24 Q And you're not aware of any such training
25 that would counsel officers on a safe manner to shoot

1 the driver of a car while the officer is in that very
2 car?

3 A No.

4 Q You would agree with me, would you not, that
5 it is a very, very risky step to take to shoot the
6 driver of a car while you're still in it?

7 A Yes.

8 Q On the night of the shooting, I believe you
9 told us that you carried a .9 millimeter Glock issued
10 by the department; correct?

11 A Yes.

12 Q Do you recall the brand of shells?

13 A No. You mean the bullet? No. No.

14 Q Okay. And on that night, Mr. Abdulahad also
15 had a .9 millimeter Glock issued to him; correct?

16 A Yes.

17 Q As far as you know the same brand of shells?

18 A Yes.

19 Q And you were aware of the fact, were you
20 not, that Mr. Abdulahad had additional weapons on his
21 person or with him that night while you were on duty?

22 A No.

23 Q Have you ever fired your .9 millimeter Glock
24 in the nighttime?

25 A In the nighttime?

1 Q That's my question.

2 A No.

3 Q Did you ever know Mr. Abdulahad had to use
4 low flash gunpowder?

5 A No.

6 Q Did you ever know him to use flash
7 suppressant gunpowder?

8 A No.

9 Q Did you ever know him to have a flash hider
10 attachment to his weapon?

11 A No.

12 Q Do you know what a muzzle flash is, do you
13 not?

14 A Like a silencer? Like a silencer?

15 Q No. A muzzle flash.

16 A No, I don't know what that is.

17 Q Well, you are aware, are you not, there's a
18 flash caused by the explosion of gunpowder as the
19 bullet is being projected out the barrel of a gun?

20 A Okay.

21 Q You're aware of that?

22 A Yes.

23 Q Right. Gunpowder comes out the barrel of
24 the gun along with the bullet; right?

25 A Yes.

1 Q And the gunpowder explodes in order to force
2 the bullet out of the barrel?

3 A Yes.

4 Q And that flash is visible, is it not?

5 A Yes. No, it's not visible.

6 Q It's not visible?

7 A No. I never saw it.

8 Q Never ever?

9 A Never.

10 Q The muzzle flash happens whether the gun is
11 fired in the day or night; correct?

12 A Yes.

13 Q And are you aware of the fact that the
14 muzzle flash from Abdulahad's firing of his weapon
15 happened after the car stopped?

16 A I'm not aware. No, I wasn't aware.

17 Q You saw the flash of the firing of the
18 weapon, didn't you?

19 A No.

20 Q Given that Mr. Phillips was shot by
21 Abdulahad's weapon, we know obviously that Abdulahad
22 had pulled his weapon from the holster; right?

23 A Say it again. Repeat what you said.

24 Q Given that Mr. Phillips was killed by
25 Mr. Abdulahad, we know that Abdulahad pulled -- at

1 some point in time pulled his weapon from his holster
2 before he --

3 A Yes.

4 Q Okay. Did you see when Abdulahad piled the
5 weapon from his holster before he entered the vehicle?

6 A No, I didn't.

7 Q At what point did you see Mr. Abdulahad pull
8 the weapon from the holster on his right side?

9 A I never saw him pull the weapon.

10 Q When you saw him on his knees, referring to
11 Mr. Abdulahad in the passenger side of the car, did
12 you see what was in his hands referring to
13 Mr. Abdulahad?

14 A No.

15 Q So fair to say then that you don't know one
16 way or another whether Mr. Abdulahad had that gun
17 pointed to Mr. Phillips' head the entire time that
18 they were driving together?

19 A That's correct.

20 Q You wouldn't know.

21 A I don't know one way or another.

22 Q And do you know one way or another in order
23 to bring the car to a stop, Mr. Phillips had agreed to
24 stop and was starting to get out of the car? You
25 don't know one way or another whether or not that's

1 true?

2 A Correct.

3 Q At the time of Mr. Phillips' death, can you
4 recall any signage in the parking lot of the police
5 Annex that declared that it was illegal to park in
6 that lot?

7 A No.

8 Q At the time that this shooting occurred, was
9 it lawful or unlawful to sit in a parked car in that
10 parking lot in the public area?

11 A It was lawful.

12 Q So sitting in a parked car was activity that
13 by itself was not suspicious; agreed?

14 A I agree.

15 Q And there was no prohibition, was there, to
16 a person who was seated in a car parked in that
17 parking lot to smoke?

18 A No.

19 Q So we know that smoking in a parked car in
20 that parking lot was not itself unlawful behavior;
21 correct?

22 A Correct.

23 Q And hence was not by itself suspicious
24 behavior; correct?

25 A Correct.

1 Q A person seated in the parking -- excuse me,
2 in the passenger seat of a lawfully parked car in the
3 parking lot of that Annex by itself is not criminal,
4 is it?

5 A No.

6 Q And those facts do not themselves reflect
7 that such a person seated in that car smoking was
8 about to commit a crime; correct?

9 A I didn't hear the last part. You faded out
10 a little bit.

11 Q All right. Sorry, if my voice went low. A
12 person seated in the passenger seat of a lawfully
13 parked car in that parking lot smoking, they by virtue
14 of that activity alone are not themselves engaging in
15 any criminal behavior, are they?

16 A No.

17 Q In entering that parking lot on that night,
18 it was Mr. Abdulahad who was driving; correct?

19 A Yes.

20 Q And he backed the car in which the two of
21 you were riding in a parking spot close to the vehicle
22 we now know that Mr. Phillips was riding; correct?

23 A Yes.

24 Q And before you got out of the car -- before
25 you got out of the car -- and by the way you were in

1 front passenger side of the car?

2 A Yes.

3 Q You were further -- because it backed in to
4 the spot?

5 A Yes.

6 Q Okay. So the person closest to Mr. Phillips
7 at the time that the car was pulled into that parking
8 spot was Mr. Abdulahad; correct?

9 A Yes.

10 Q All right. Before you got out of the car,
11 you did not know what, if anything, Mr. Phillips was
12 smoking, did you?

13 A No. I was just told by Abdulahad, he
14 said -- he said he's sitting right beside us smoking
15 marijuana. Smoking weed.

16 Q Your window was up at the time; correct?

17 A No. It was up. It was kind of cold
18 outside.

19 Q Right. The windows to your vehicle in which
20 you and Mr. Abdulahad were riding, the windows were
21 up; correct?

22 A Yes.

23 Q And the windows to the vehicle in which
24 Mr. Phillips was situated were up, were they not, when
25 you got out of the car?

1 A Yes.

2 Q Okay. But you didn't smell anything when
3 Mr. Abdulahad said that, did you?

4 A No.

5 Q But when you looked over you didn't see
6 anybody smoking anything, did you?

7 A No.

8 Q Did you ask Mr. Abdulahad, say I just looked
9 over there and I saw this guy, but I didn't see
10 anybody smoking anything. Did you say that to him?

11 A No.

12 Q Because as you walked towards the car you
13 didn't see anybody smoking anything, did you?

14 A No.

15 Q All right. So the activity that
16 Mr. Abdulahad claimed to have seen isn't what you saw;
17 correct?

18 A Right.

19 Q And in fact your observations contradicted
20 his claim to you, didn't it?

21 A No. It just -- I just -- I wasn't paying
22 attention to it. I didn't even see the guy. I wasn't
23 paying attention. He may have saw it and I didn't.
24 But I didn't see it.

25 Q You didn't see it. And as you walked toward

1 the car, you didn't see anybody smoking anything, did
2 you?

3 A Correct.

4 Q And that observation on your part was
5 inconsistent to what Mr. Abdulahad had told you,
6 wasn't it?

7 MS. MILLER: Objection, but you can answer.

8 Q It was inconsistent was it not, sir?

9 A At that time yes.

10 Q Okay. So at the time you approached the
11 window, behind which Mr. Phillips was situated, all
12 you saw was a man sitting in a seat, that's all you
13 knew about him; right?

14 A Yes.

15 Q You didn't know how Mr. Phillips had gotten
16 there?

17 A No.

18 Q You didn't know whether or not he had driven
19 the car?

20 A No. He was on the passenger side.

21 Q Okay. And you didn't know whether he had
22 been smoking anything.

23 A Not until he rolled the window down.

24 Q Well, when he rolled the window down you
25 didn't see him smoking anything then, did you?

1 A No. No.

2 Q Before you got out of the car, that is to
3 say the car in which you were riding Mr. Abdulahad,
4 you told Mr. Abdulahad, did you not, tell this guy to
5 get out of here with this? He needs to get out of
6 here.

7 A Yes.

8 Q You told Mr. Abdulahad that, didn't you?

9 A Yes.

10 Q You wanted Mr. Phillips to leave, didn't
11 you?

12 A I mean, yes, if he was doing anything
13 illegal. If he was smoking, I just didn't feel that
14 that was necessary to, you know -- I just wanted him
15 to be aware of what he was doing. You know, to keep
16 him out of trouble.

17 Q Right. You told your partner that you
18 wanted the guy to leave; right?

19 A Right.

20 Q Because that's indeed what you wanted to
21 happen; correct?

22 A Yes.

23 Q And when you talked to Phillips among other
24 things he told you, did he not, that -- I mean you
25 could see him sitting there in the passenger side of

1 the car; right?

2 A Yes.

3 Q And you didn't think he was the one who had
4 driven the car there?

5 A Right.

6 Q And indeed the engine was still running;
7 right?

8 A Yes.

9 Q And so you -- you saw by virtue of the
10 information that you had available to you that he was
11 waiting for somebody that was inside?

12 A Yes.

13 Q And that's what he told you?

14 A Yes.

15 Q And there was nothing unlawful about him
16 waiting for somebody who was inside if Mr. Phillips
17 was not smoking weed, was it?

18 A I didn't see him smoking weed.

19 Q Right. Right. So there was nothing
20 unlawful about him sitting in that car waiting for
21 friends who were inside if he wasn't smoking weed?

22 A Right.

23 Q So why at that point did you tell Phillips
24 he had to leave?

25 A My partner said that he was smoking and I

1 wasn't telling him to leave. I was saying if you're
2 doing anything illegal, maybe you shouldn't be doing
3 that around this police station. You should go
4 somewhere else and do that. Why would you do it on
5 the police station -- in front of a police station.
6 That's what I was telling him. I tried to.

7 Q Right. You were giving him that information
8 and Phillips was telling you that he wasn't smoking
9 weed right then; didn't he?

10 A Right.

11 Q Right. So you hadn't seen him smoked and he
12 was saying: I wasn't smoking. So from your vantage
13 point he could stay under those circumstances,
14 couldn't he?

15 A Correct.

16 Q You told Phillips, nonetheless, that he
17 needed to leave, didn't you?

18 A No. I told him -- no. I said if you are
19 going to be smoking, you need to leave. He said -- he
20 said that I'm not smoking. I think he said he had a
21 Black Mamba or something like that -- something like
22 that along those lines. He said he did it prior,
23 because I smelled it. Oh, we did that prior. Yeah.

24 Q Correct. And you didn't have any
25 information to the contrary that even if he had

1 smoked, it was something he had done before he had
2 gotten into the parking lot? You didn't have any
3 information to the contrary, did you?

4 A Right.

5 Q Okay. So if he's there and it's lawful for
6 him to be waiting for his friends and he's not engaged
7 in smoking marijuana in your presence, then at that
8 point in time when you're beside the window there's
9 not activity that you saw him engaged in that was
10 criminal activity; correct?

11 A Correct.

12 Q Okay. So when you exited the car in which
13 you and Abdulahad had arrived, what were you planning
14 to do?

15 A My plan was just to tell him to leave. I
16 wasn't trying to make an arrest. I was trying to go
17 home on time. I was telling him, like, you know,
18 trying to keep him out of trouble. Those are my
19 plans. Just trying to keep the guy out of -- you
20 know, I'm just trying to keep him out of trouble.

21 Q But when you got out of the car according
22 to -- I believe according to what you told us before,
23 you told Abdulahad that Phillips had to leave; right?

24 A Right.

25 Q And you told him that after you had walked

1 over towards -- you told that to Abdulahad after you
2 had walked over towards Phillips; correct?

3 A No. Abdulahad said that the kid he was --
4 he said this guy is sitting right next to us smoking
5 marijuana. I said for real. I said, man, tell him to
6 leave. Right? Then I got out and then I just said --
7 I went over to go talk to him. You know, just go talk
8 to him, you know. I just went over there to go talk
9 to him and let him -- you know, try to keep him out of
10 the trouble. Those were my intentions.

11 Q All right. So going over to talk him, that
12 was your idea, not Abdulahad's; correct?

13 A Right.

14 Q In fact, initially when the two of you got
15 out of the car, you and Mr. Abdulahad, Mr. Abdulahad
16 was walking into the Annex. He wasn't walking towards
17 the car, was he?

18 A I don't -- I don't think so. I don't think
19 so. I think -- you know, I think that he was getting
20 his stuff together to get out of the car and I just
21 got out. And I don't know what Abdulahad was doing at
22 that time. I really don't.

23 Q Okay. Well, you got out of the car and you
24 walked -- you walked directly over to the car in which
25 Phillips was seated?

1 A Right.

2 Q And Abdulahad, if he started to go directly
3 into the Annex, you don't know one way or another
4 whether that was his original direction?

5 A No.

6 Q Okay.

7 A Because he was behind me.

8 Q Well, he was behind you once you got
9 alongside the car; right?

10 A Right. Right.

11 Q And he was as close to the entrance to the
12 Annex as you were; right?

13 A Yes.

14 Q My understanding that as far as any physical
15 activity in which Mr. Phillips was engaged before you
16 got to the window, you didn't see what he was doing at
17 all?

18 A No.

19 Q Other than just being there, that's all he
20 was doing?

21 A Yes. The car was running and he was just
22 sitting there.

23 Q And as he was sitting there, indeed he was
24 slouched against the passenger door adjacent to the
25 passenger seat in which he was riding, wasn't he?

1 A Yes.

2 Q That was the physical position that he had
3 as you walked up to the window?

4 A Yes.

5 Q And when you walked up to the window that's
6 when you got his attention; correct?

7 A Yes. I don't know if he had Abdulahad's
8 attention first. I don't know if he got his attention
9 first that he knew that we were cops or whatever, I
10 don't know. Because at that point I wasn't paying
11 attention or he told me afterwards. He may have saw
12 us before we saw him -- before I saw him. He may have
13 seen Abdulahad first.

14 Q What did Abdulahad tell you afterwards?

15 A He just told me the guy was smoking --
16 smoking marijuana in the car.

17 Q No. Afterwards.

18 A What do you mean afterwards?

19 Q You just used the word afterwards referring
20 to Abdulahad, he said he just told me afterwards and
21 then you went on to some other thought.

22 A No, what I was saying. The passenger -- I
23 mean, I'm sorry. The kid -- I forget the kid's name.
24 He may have saw Abdulahad first and then he told me,
25 you know, because he saw him first. I didn't see

1 anything. I forgot what I was doing. I wasn't even
2 paying attention. But we was just backing in, and he
3 said, yeah -- I don't know if they locked eyes or
4 what. How -- how he came in contact with them, but he
5 was on his side. But after he told me that I got out
6 of the door. I said tell the kid -- just tell the kid
7 to leave, you know. When I went to get out, I was
8 going to tell him to get out of here with that, so.

9 Q All right. That's the reason why he walked
10 over to the window?

11 A Right. Right.

12 Q Okay. And as you approached the window,
13 Phillips he was slouched down against the passenger
14 door of the car; correct?

15 A Yes.

16 Q And you couldn't see anything that he was
17 doing?

18 A No.

19 Q Okay. In the period between you arriving at
20 the side of the car and until Phillips got out of the
21 car, I think you told us already that Phillips was not
22 smoking; correct?

23 A Right.

24 Q You told him to roll down the window and he
25 did; correct?

1 A Yes.

2 Q And when he rolled down the window, did you
3 see in any of his physical -- referring to Phillips --
4 any of his physical activity required to activate the
5 window?

6 A No.

7 Q Well, you assumed he used his hand to
8 activate the window; right?

9 A Yes, he did. He rolled it down and -- yeah.
10 Yeah, I mean.

11 Q He rolled it down. But you didn't see his
12 hand as he rolled the window down, did you?

13 A I mean, yeah, I saw his hands because I was
14 looking in the car like -- I was looking in trying to
15 see his hands.

16 Q And when you saw -- and because you were
17 looking in the car to see his hands, you saw his hands
18 as he rolled the window down?

19 A Yes.

20 Q And when he rolled it down, that's when he
21 denied that he was smoking in the parking lot;
22 correct?

23 A Yes.

24 Q And -- let's see. In the time -- between
25 the time that the window got rolled down by Phillips

1 and the time that you learned that Phillips had been
2 shot, you didn't see Phillips ever throw anything to
3 the ground, did you?

4 A No.

5 Q And you didn't see anything in his hands in
6 that span of time, did you?

7 A No.

8 Q You didn't see him place -- he, Phillips,
9 place anything into the interior of the car with his
10 hands, did you?

11 A He was fidgeting when I approached him. He
12 looked like he was putting something on the side. He
13 took his hands from off the window and started placing
14 his hands on the side as if -- that's the reason I
15 asked him to step out because I couldn't see his hands
16 anymore. He started like, you know, reaching further
17 down -- he lift up and starting lifting further down.

18 Q All right. You said his windows were on
19 window; right?

20 A Right.

21 Q And his hands were on the window at a time
22 when the window had already been rolled down; right?

23 A Yes. Yes.

24 Q And in order to comply with your request
25 that he get out of the car, he had to move his hands

1 into the side of the passenger side door to open the
2 door; didn't he?

3 A That was before. That was before. I didn't
4 ask him to step out of the vehicle until he started
5 fidgeting. Until he started fidgeting. He kept
6 fidgeting. And I was like I told you I don't care
7 about the weed. Why are you moving around so much?
8 Then I asked him to step out. And then he moved his
9 hands to open the door.

10 Q Okay. And when you saw his hands there
11 wasn't anything in them?

12 A Right.

13 Q So the information that you have as to the
14 time that he opens the door --

15 A Right.

16 Q -- the information that you actually have is
17 that he has not had anything in his hands? That's the
18 information you had?

19 A Correct.

20 Q Correct, okay. So at the time he opened the
21 door and gets out you had no information other than
22 that he had nothing in his hands, did you?

23 A Correct.

24 Q At the time that he had -- after the time
25 that he rolled down the window and then opened the

1 door. As of that point in time, he had not seen him
2 smoking anything let alone marijuana, had you?

3 A Correct.

4 Q He had denied that he had been smoking
5 marijuana in the parking lot; correct?

6 A Yes.

7 Q You didn't see anything in his hands;
8 correct? Correct?

9 A Correct.

10 Q And you knew that he was waiting on friends
11 and you knew that was lawful?

12 A Right.

13 Q All right. So as of the time that he has
14 been standing alongside of the car in which he had
15 been riding, you didn't have any information to the
16 effect that right then at that point in time that he
17 was engaged in criminal behavior, did you?

18 A Correct.

19 Q What reason then was there to arrest him at
20 that point in time?

21 A He wasn't arrested. I did not arrest him.
22 I just -- I had him step out for my safety. I smelled
23 marijuana. So I had him to step out and I wanted to
24 pull out on the radio because it lead to me talking to
25 him to me asking him more questions. When I started

1 to asking more questions why are you moving around.
2 So I wanted to pull out on the radio. That was not,
3 you know -- that was the reason.

4 Q Of course, you had him step -- I'm sorry
5 sir. Go ahead.

6 A Because I was having an interaction with
7 him. Right? And his fidgeting became alarming to me
8 as though -- like he had something to hide. And I
9 told him I didn't care about the marijuana, but he
10 was -- he was just started moving and his manner -- a
11 lot of times when people are moving like that they're
12 trying to hide something.

13 Q I'm asking about Mr. Phillips, sir. I'm not
14 asking about somebody else.

15 A Right. Okay.

16 Q From your observation, the physical activity
17 that you saw, your words are that he was fidgeting
18 while he was in the car?

19 A Correct.

20 Q Okay. And you have told us that you made
21 the decision that for the purpose of officer safety
22 you would have him get out of the car; correct?

23 A Correct.

24 Q He complied with that request; correct?

25 A Yes.

1 Q And once he complied with your request and
2 was standing alongside of the car that enhanced
3 officer safety as you had wished, didn't it?

4 A Yes.

5 Q You didn't see anything on the floor of that
6 car on the passenger side when he got out, did you?

7 A No. I didn't get that close.

8 Q Well, you were within inches of the man,
9 weren't you?

10 A Right. I backed up. I just backed up away
11 from him --

12 Q Okay.

13 A -- and kept him at arm's length so I can --
14 just so I can, you know, just -- so.

15 Q Your at arm's length away from him?

16 A Right.

17 Q No more than three feet?

18 A Right.

19 Q You're close enough that you can see his
20 entire body; correct?

21 A Correct.

22 Q And thus successful in your effort to
23 enhance officer safety by asking him to get out of the
24 car. He complied. And hence, your safety was
25 enhanced by him standing out of the car; correct?

1 A Right. Correct.

2 Q Than when he was seated in the car; correct?

3 A Correct.

4 Q Okay. You used the phrase pull out, I
5 think.

6 A Yes.

7 Q You were going to pull him out. Describe
8 for us, please, what you mean by that phrase.

9 A Pulling out just informing the dispatcher of
10 my location and, you know, what we have going on.
11 Just giving her our location, because she never knew
12 we were there.

13 Q Okay. All right. And I think we've gone
14 over the fact that you never reached anybody with
15 dispatch. You never told them you were pulling out.

16 A Correct.

17 Q Pulling out is a phrase that refers to --
18 you were engaged in something at the time, that's kind
19 of what it means; right?

20 A Yes.

21 Q Okay. You were engaged in some official
22 duty. You weren't at the same time, though, calling
23 dispatch to get information about Phillips; correct?

24 A No.

25 Q Because at that time you didn't know his

1 name.

2 A Right. I was going to tell them -- tell
3 radio -- tell them, you know, give them a way of my
4 location and, you know, that we encountered, you know,
5 a black male of given description.

6 Q Okay.

7 A Right.

8 Q All right. You never -- there wasn't a
9 point in time that evening before he was shot that you
10 asked Phillips' name or asked for his driver's license
11 or ID, you didn't ask any of that from him; right?

12 A No.

13 Q I wanted to ask you this about the smoking
14 business. How do you explain the fact that there was
15 no roach found in the car that would have corresponded
16 with anybody smoking in the car when you pulled up?

17 A I never searched the car.

18 Q I didn't ask you to search it. How do you
19 explain the fact that no roach or burnt material was
20 found in the interior of the car after Phillips was
21 killed?

22 A I can't explain it.

23 Q Do you have any facts on which to dispute
24 that no burnt marijuana was found inside of that car
25 after Phillips was killed? You don't have anybody to

1 speak to that, do you?

2 A No.

3 Q And no explanation for it, do you?

4 A No.

5 Q Once you were alongside the car with the
6 window rolled down, did you ever ask Phillips to show
7 you the marijuana?

8 A No. He said that he wasn't smoking. He
9 said he smoked yesterday. Before.

10 Q All right. So you didn't -- and you never
11 saw what, if anything, he ever had in his hands before
12 he got out of the car?

13 A Correct.

14 Q And you told him to get out of here,
15 something to that effect, once he got out of the car;
16 correct?

17 A No. I told him this while he was sitting in
18 the car.

19 Q Okay. All right. And obviously he disputed
20 that he had to leave?

21 A No. No. He didn't.

22 Q He didn't say I've got friends inside, all
23 I'm doing is waiting?

24 A Right. Yeah, he said that. Yeah, he said
25 something that. I think he said something like I'm

1 waiting on my cousin or something, you know, they went
2 inside.

3 Q Okay. And you had no information to the
4 contrary; that is, to say as far as what you knew he
5 was saying was true?

6 A Correct. I believed him.

7 Q Other than what you've told me so far, can
8 you describe any other actual physical movement on the
9 part of Mr. Phillips' hands that he took while he was
10 inside the car and before he got out in response to
11 your telling him to get out of the car? Can you think
12 of anything else that you haven't told us about his
13 hands?

14 A No.

15 Q And once he was standing alongside of the
16 car, can you think of anything else that he did with
17 his hands before he got back into the car that you
18 haven't already told us?

19 A No.

20 Q You never directed Phillips to put his hands
21 on the dash of the car while he was still inside of
22 it, did you?

23 A No.

24 Q And you never ordered him to put his hands
25 on the windowsill while he was still inside the car,

1 did you?

2 A No.

3 Q If you were worried about what he was doing
4 with his hands while he was still inside the car, an
5 option that you had would have been to direct that he
6 put his hands either on the dash of the car or on the
7 windowsill; correct?

8 A Yes.

9 Q Before ordering Phillips out of the car,
10 there were no words that he said to you or to
11 Mr. Abdulahad that you would interpret it to be a
12 threat, were there?

13 A No.

14 Q And in fact in the entire period of time in
15 which you saw or heard Mr. Phillips on that night, he
16 never said any word that in your hearing it you took
17 as a threat?

18 A No.

19 Q In the period of time in which Mr. Phillips
20 is situated inside of the car and before he was
21 standing alongside of it, there never came a time, did
22 there, in which Mr. Phillips used his body in such a
23 way to direct a motion towards you that you considered
24 to be threatening; correct?

25 A Yes. He came up -- he came to me once I

1 started to grab the radio. When I went to pull out
2 the radio that's when he came at me and grabbed me.

3 Q Please understand, sir. I understand that
4 you have information that you want to give us about
5 that stage. Okay?

6 A Right.

7 Q Right now I'm segregating that period of
8 time between the time you come up to -- walk up to the
9 window and Mr. Phillips is in the car, and the point
10 in time in which he is now just standing outside.
11 Okay?

12 A Yes, sir.

13 Q I want to hear what you can tell us after
14 that point. But in that period of time he's in the
15 car, the window comes down. You tell him to get out,
16 and then he's standing up. In that period of time,
17 there's no physical movement that he took with his
18 hands that you viewed as using his hands to engage in
19 a physical threat towards you; correct?

20 A None.

21 Q Okay. So now he's standing alongside the
22 car. Okay. We're at that point in time. And you
23 told us that in addition -- can you think of anything
24 else that you told him while the two of you were
25 standing close to one another once he stood up that

1 you haven't already told us?

2 A No.

3 Q Okay. That being the case then, you never
4 told Phillips that he could not leave, did you?

5 A No.

6 Q Not having told him that he could not leave,
7 as far as what you had communicated to him, he was
8 still free to go; wasn't he?

9 A Yes.

10 Q But when he started to move in your
11 direction that you're standing alongside him and he's
12 standing as well, that's the point in which you told
13 Abdulahad to grab him?

14 A Yes.

15 Q And when you told Abdulahad to grab
16 Mr. Phillips, it's because you had decided that you
17 were going to keep Phillips present there with you;
18 correct?

19 A After he -- yes. After he pushed me, you
20 know.

21 Q With what part of his body -- referring to
22 Phillips -- did he in your words push you?

23 A With his hands.

24 Q With both hands or one hand?

25 A Both hands.

1 Q And on what part of your body did
2 Mr. Phillips' two hands touch?

3 A My chest.

4 Q All right. And when he touched your two
5 hands [sic], you are within arm's reach of one another
6 clearly; correct?

7 A Yeah.

8 Q And Mr. Abdulahad is not between the two of
9 you, is it?

10 A No.

11 Q Mr. Abdulahad is where at the point in time
12 that you say Mr. Phillips had placed his two hands on
13 your chest?

14 A He was standing beside me, like --

15 Q All right. On which side?

16 A On my right side.

17 Q All right. And when the two hands of
18 Mr. Phillips were placed onto your chest, what
19 physical action did Mr. Phillips take next?

20 A He attempted to go back inside the car.

21 Q All right. So in placing his hands --
22 taking what you just described to us then, I'm correct
23 in understanding then that Mr. Phillips put his two
24 hands on your chest did not move you from where you
25 were; correct?

1 A Yes.

2 Q You stood your ground; correct?

3 A Yes.

4 Q He didn't push you out of the way, did he?

5 A No.

6 Q And he didn't touch Mr. Abdulahad, did he?

7 A No.

8 Q All right. So going back into the car on
9 Mr. Phillips' part, you didn't know what he was going
10 to do next, did you?

11 A No.

12 Q And because you didn't know what he was
13 going to do next, for all you knew he was going to
14 stay there just like you wanted; correct?

15 A No. I thought, you know -- I mean, repeat
16 the question.

17 Q You just told us, sir, that you did not know
18 what he was going to do next when he went into the
19 interior of the car after he had placed his two hands
20 on your chest. That's what you just told us; am I
21 right?

22 A Right.

23 Q Thus, you did not know what his next step
24 was going to be, did you?

25 A Correct. I did not know.

1 Q And you did not have any facts known to you
2 at that time on which to conclude that he was going to
3 do anything other than sit in that seat, did you?

4 A No. He jumped in the driver's side. I knew
5 he was going to pull off.

6 Q I understand he ended up in the driver side.
7 We all know that; right?

8 A Right.

9 Q I'm asking you from what you understood at
10 the time when he first went into the car. Not where
11 he ended up.

12 A I don't know.

13 Q But when he first went into the car, you
14 didn't know anything about what he was going to do
15 next; did you?

16 A Correct.

17 Q Because when he went first into the car he
18 went into the passenger side of the car; right?

19 A Correct.

20 Q He didn't stay, hey, I'm going to drive
21 away, did he?

22 A No.

23 Q He didn't say I'm going to leave my friends
24 who are still inside; did he?

25 A No.

1 Q All he did was he reentered the car out of
2 which you told him to leave; correct?

3 A Yes.

4 Q And when he initially entered the car, he
5 went into the passenger side; correct?

6 A Yes.

7 Q And when he went into the passenger side,
8 you didn't know whether he wanted to drive away or
9 stay; did you?

10 A No.

11 Q You couldn't tell from his initial reactions
12 were, could you?

13 A Correct.

14 Q But you had told Abdulahad to hold onto him;
15 right?

16 A Yeah.

17 Q And because you had told Abdulahad to hold
18 onto him Abdulahad did; right?

19 A Yes.

20 Q And as he held onto him -- as Abdulahad held
21 onto Mr. Phillips, that's when Mr. Phillips started
22 moving over towards the driver side; correct?

23 A Yes.

24 Q Because Abdulahad went in after him; right?

25 A Yes.

1 Q Okay. So once he moved over into the driver
2 side -- well, as you saw him and you certainly were
3 watching at that point -- as you saw him move -- him
4 Phillips -- from the passenger side where he had
5 started out and into the driver side, you were able to
6 observe his actions; correct?

7 A Yes.

8 Q Okay. In moving over he had to cross
9 over -- he Phillips -- had to cross over the console
10 of the car; correct?

11 A Yes.

12 Q He was able to do that quickly; correct?

13 A Yes.

14 Q When he climbed over the brake lever was not
15 pulled up, was it?

16 A I didn't see it.

17 Q Right. It was in the down position, wasn't
18 it?

19 A I didn't see it.

20 MS. MILLER: Objection.

21 Q You didn't see it. Let me ask it this way,
22 sir. You didn't see the brake -- the emergency brake
23 lever veer pulled up, did you?

24 A I wasn't paying attention.

25 Q I'm just asking what you saw or didn't see.

1 You didn't see it, did you?

2 A I didn't see it.

3 Q Okay. Now, when Mr. Abdulahad went in after
4 Mr. Phillips he was still -- he, Abdulahad, was still
5 holding onto Mr. Phillips' body -- some part of his
6 body; correct.

7 A I couldn't see. Once Abdulahad went into
8 the car fully I couldn't see. The door closed. He
9 pulled the door for a minute and the door was starting
10 to close.

11 Q Well, the door closed pretty much right away
12 once he got into the car; right?

13 A No. It didn't close right away. It closed
14 as he's pulling off.

15 Q Okay. And you told us earlier that
16 Mr. Abdulahad was positioned as he -- once he got into
17 the car he was on his knees, his knee having contact
18 with the passenger side seat; correct?

19 A Yes.

20 Q So he was in a position, as you saw it,
21 relatively speaking, where he was higher in the
22 interior of the car than Mr. Phillips?

23 A I could just see his knees. And I could
24 just see his lower -- from like the waist down, you
25 know, him on his knees. After that part I couldn't

1 see it because it was a blind side for me.

2 Q By blind side, you were blocked from seeing
3 Mr. Phillips?

4 A Yes.

5 Q Because Mr. Abdulahad's body had kind of
6 taken up the interior space in terms of your ability
7 to see Mr. Phillips; is that correct?

8 A Yes.

9 Q Okay. So you didn't see -- I take it you
10 didn't see Mr. Phillips actually engage the
11 transmission?

12 A No.

13 Q Obviously we know it happened because they
14 pulled away; right?

15 A Yes.

16 Q Okay. And you did not hear, did you, you
17 did not hear Mr. Abdulahad tell Mr. Phillips to stop?

18 A No.

19 Q And you did not hear hence Mr. Abdulahad say
20 anything to Mr. Phillips to the effect that I have a
21 gun and I am going to shoot you if you continue
22 driving? You didn't hear any of that, did you?

23 A No.

24 Q What did you say to either Mr. Abdulahad or
25 Mr. Phillips once you realized that Abdulahad had gone

1 into the car?

2 A I didn't say anything. I froze like. I
3 just froze for a second because it caught me by
4 surprise.

5 Q Just going back for a second. Am I correct
6 in understanding that at least as you sit here today
7 you don't have any recollection of having a flashlight
8 that you used to shine into the interior of the car
9 before Mr. Phillips got out?

10 A Right.

11 Q Okay. Would it be your testimony today that
12 that did not happen or just that you don't recall?

13 A I just don't remember.

14 Q And again, kind of summarizing what I
15 believe is the case from your testimony that between
16 the time you walked over to Mr. Phillips' car -- or
17 sometimes I'll call it the Malibu -- between the time
18 that you walked over towards the Malibu and the time
19 that the Malibu stopped after the shooting, you never
20 saw anything on the floor of the car?

21 A No.

22 Q And you didn't see anything on the driver's
23 seat either other than obviously Mr. Phillips?

24 A What? After the car stopped?

25 Q I don't mean to confuse you, sir. I want to

1 be clear on the time. That isn't what I asked, but I
2 appreciate you asking me to clarify.

3 Let's do it this way. In the period of
4 time prior to Mr. Phillips getting out of the car as
5 you're standing there alongside up to that point in
6 time you had not seen anything on the passenger seat
7 itself, did you?

8 A No.

9 Q And in that same period of time you had not
10 seen anything on the driver's seat itself, did you?

11 A No.

12 Q And once -- let's see, in the period of time
13 between the point where Mr. Phillips is standing
14 alongside the car and the time that he gets into the
15 driver's seat, other than seeing Mr. Abdulahad with
16 his knees on the passenger seat, you didn't see
17 anything else on the passenger seat in that time frame
18 either, did you?

19 A No.

20 Q At the point in time that Mr. Phillips
21 pulled away from where you were situated with
22 Mr. Abdulahad in the vehicle, the fact is that you did
23 not have any information on which to conclude that
24 there was a weapon in the Phillips' car other than the
25 weapon that Mr. Abdulahad carried; correct?

1 A Correct.

2 Sir, I want to inform you I only have
3 like 5 percent left on my phone. It's plugged up, but
4 my charger -- this phone, it's my work phone, and it
5 don't -- it don't charge well.

6 Q You're using the phone for this Zoom call?

7 A Yes.

8 Q Okay. Let's go off the record for a moment.
9 Let me understand that, sir, and we'll see what, if
10 anything, we need to do.

11 (Off the record from 1:41 p.m. to
12 1:43 p.m.)

13 Q (By Mr. Spears) While Mr. Phillips stood
14 alongside of the Malibu and before he got back in, you
15 didn't see anything unusual about what he was wearing,
16 did you?

17 A No.

18 Q You didn't take note of anything that -- any
19 emblems on his jacket or on his pants?

20 A No.

21 Q Okay. There wasn't anything unusual about
22 anything that he was wearing on his head; correct?

23 A No.

24 Q If you noticed that the beltline of his
25 pants were low and below his buttocks?

1 A No.

2 Q Did Mr. Phillips say anything to you at the
3 point in time that either of his hands were on your
4 chest?

5 A No.

6 Q And in the physical motion of placing his
7 hands on your chest it didn't injure you; right?

8 A No.

9 Q It wasn't a blow to your chest; right? He
10 placed his hands on your chest?

11 A Yes.

12 Q And you were not pushed back, you told us
13 that?

14 A He tried to push me back, but he didn't.

15 Q I'm not asking right now for what you
16 interpret his actions to have meant. His physical
17 motions of placing hands on your chest did not push
18 you back; did they?

19 A No.

20 Q Okay. Do you recall that -- excuse me, let
21 me rephrase the question.

22 I know I have asked you a number of
23 questions about what you saw -- what you saw in the
24 interior of the car before Mr. Phillips manipulated
25 the car in such a way that it pulled away. Do you

1 have any information to the effect that Mr. Abdulahad
2 had any unique or different information about
3 Mr. Phillips and his actions that you have not already
4 described to us as it pertains to that particular
5 point of time?

6 A No.

7 Q When he went into the car while he was
8 holding onto Mr. Phillips, as far as you knew he knew
9 the same -- he had the same information as you did
10 about Mr. Phillips?

11 A Yes.

12 Q Did you hear anything that Mr. Abdulahad had
13 said to Mr. Phillips while Mr. Abdulahad was in the
14 interior of the car with Mr. Phillips?

15 A No.

16 Q Did you hear Phillips say anything at all
17 after he started into the car?

18 A No.

19 Q After Mr. Phillips went into the driver
20 seat, am I correct in understanding based on your
21 testimony, that you were not able to see what
22 Phillips' physical motions consisted of?

23 A Correct.

24 Q Hence, you never saw him reach for a gun
25 anywhere in that car, did you?

1 A No.

2 Q Or anything for that matter. You didn't see
3 him reach for anything once he went into the car other
4 than getting in the driver seat?

5 A No.

6 Q And when Phillips went into the driver side,
7 do you recall the interior dome light came on.

8 A No. I don't recall.

9 Q Between the shooting of Mr. Phillips and
10 your becoming aware that the Atlanta Police Department
11 had put out a news release to the effect that
12 Abdulahad had been kind of half in and half out of the
13 car. Can you think of anyone who you spoke to about
14 the facts and circumstances as you saw them of this
15 incident other than what you've already told us?

16 A No.

17 Q When the car pulled out of the parking spot
18 where it was situated with Mr. Abdulahad and Phillips
19 in it, could you hear the car?

20 A No.

21 Q Can you think of any impediment to your
22 capacity to hear that existed on that night?

23 A No.

24 Q Do you have any reason to think that you
25 heard the gunshot, but just don't remember?

1 A No. I didn't hear it.

2 Q What is your explanation, if any, for how
3 you did not actually hear the gun go off?

4 A I didn't hear it.

5 MS. MILLER: Objection. Objection. But you
6 can answer.

7 A I didn't hear it.

8 Q I understand that's your testimony. I'm not
9 trying to say, oh, you didn't say that. I'm asking
10 whether you have any explanation for how it could be
11 that you didn't hear it?

12 A No.

13 Q Can you think of anything that -- any
14 activity that you saw taking place inside of the
15 Malibu as it pulled away from you that you have not
16 already described to us?

17 A No.

18 Q Is it the case that as the Malibu was moving
19 away from where you were situated that you continued
20 to watch it?

21 A Yes.

22 Q And as you continued to watch it through the
23 rear window of the vehicle, you could see that there
24 was some commotion going on; correct?

25 A No. I was keyed in on the tag.

1 Q I'm sorry. Please say again.

2 A No.

3 Q No, you didn't see anything going on in the
4 interior?

5 A No. I couldn't see.

6 Q Do you have any sense of how quickly the car
7 was moving away from you when it pulled out of the
8 parking slot?

9 A I couldn't catch up with it while I was
10 running behind it, so it was moving pretty fast.

11 Q All right. And because it was moving pretty
12 fast, you do know -- obviously there came a point in
13 time when it stopped. Right, the car stopped?

14 A Right.

15 Q Right. And in order for the car stopped it
16 had to slowed somewhat before it came to a full stop;
17 correct?

18 A Yes.

19 Q All right. And in coming to a full stop,
20 you didn't hear any screeching sound of tires on the
21 asphalt; did you?

22 A No.

23 Q All right. So from what you could tell, at
24 least from the, you know, senses that you had
25 available to you, the car came to a controlled stop?

1 A Yes.

2 Q Did it appear to you then -- did you notice
3 that the car was slowing down before it fully stopped
4 or you just kind of logically understand that's what
5 happened?

6 A I kind of logically understood that's what
7 happened.

8 Q Okay. And do you have a sense of how
9 long -- I mean, I realize it was going kind of fast
10 when it first started off and you started to kind of
11 run after it; right?

12 I'm sorry. Mr. Robeson left? Can you
13 hear us, sir? Mr. Robeson.

14 Ms. Miller, do you have any idea what's
15 going on?

16 MS. MILLER: I don't.

17 MR. SPEARS: I'm sorry? I couldn't hear
18 you.

19 MS. MILLER: I said I don't, but I can try
20 to give him a call since he's -- the phone --

21 MR. SPEARS: I mean, it's clear he's still
22 connected, I guess, to the call. Since we can
23 see a visualization.

24 MR. FOSTER: I'm quite sure his phone just
25 died.

1 MS. MILLER: Okay. I'll give him a call.

2 MR. SPEARS: All right.

3 MR. FOSTER: And, Brian, he was trying to
4 explain before this happened, the devices that we
5 have, if he's not using the native charger for it
6 the ones that he's using the power it may not
7 give the capacity to charge while doing video
8 calls or videos generally. I have a similar
9 device and if I don't use that native charger,
10 and it did not appear from what he showed us,
11 that was a native charger. It will run until it
12 dies.

13 COURT REPORTER: Are we still on the record?

14 MR. SPEARS: We have been. Now let me
15 suggest we go off the record for now.

16 (Off the record at 1:55 p.m. to
17 3:03 p.m.)

18 MR. SPEARS: Let the record reflect that at
19 some point -- and I forget exactly what time it
20 was maybe. Let's say around about 10 minutes
21 till 2:00. The witness, it appears -- the
22 witness's phone ran out of a charge and we lost
23 contact with the witness. Counsel has attempted
24 to reach him by phone since that time; that is to
25 say, Ms. Miller and City attorneys' office has

1 tried to reach him since that time and have not
2 had contact with him. We're agreeing to resume
3 this witness's deposition tomorrow. That will be
4 the 17th, March 17th at 1:00 p.m.

5 In the meantime, if you could, Staci,
6 continue to try to reach him and see if we can
7 resume sometime at 1:00. Anything else from
8 anybody?

9 MS. MILLER: Nothing else from me.

10 MR. SPEARS: All right. Thank you,
11 everyone. We'll resume tomorrow at 1:00 o'clock
12 and see you then.

13 (Ended at 3:05 p.m.)
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1 DISCLOSURE

2 STATE OF GEORGIA DEPOSITION OF EL MALIK ROBESON-EL
3 COUNTY OF PAULDING Date: March 16, 2021

4 Pursuant to Article 10.B of the Rules and
5 Regulations of the Board of Court Reporting of the
6 Judicial Council of Georgia, I make the following
disclosure:

7 I am a Georgia Certified Court Reporter. I
8 am here as a representative of American Court
Reporting Company, Inc.

9 I am not disqualified for a relationship of
interest under provisions of O.C.G.A. 9-11-28(c).

10 American Court Reporting Company, Inc., was
11 contacted by the offices of Brian Spears, Esquire to
provide court reporting services for this deposition.

12 American Court Reporting Company, Inc. will
13 not be taking this deposition under any contract that
is prohibited by O.C.G.A. 15-14-37(a) and (b).

14 American Court Reporting Company, Inc., has
15 no exclusive contract to provide reporting services
16 with any party to the case, any counsel in the case,
or any reporter or reporting agency from whom a
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18 charge its usual and customary rates to all parties in
19 the case, and a financial discount will not be given
to any party to this litigation.

20 This the 16th day of March 2021.

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CATHY M. COX, B-441

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C E R T I F I C A T E

STATE OF GEORGIA)
COUNTY OF PAULDING)

I hereby certify that the foregoing
transcript was taken down, as stated in the caption,
and the proceedings were reduced to typewriting under
my direction and control.

I further certify that the transcript is a
true and correct record of the evidence given at the
said proceedings.

I further certify that I am neither a
relative or employee or attorney or counsel to any of
the parties, nor financially or otherwise interested
in this matter.

This the 11th day of April 2021.

Cathy M. Cox


CATHY M. COX, CCR, RPR
Certificate No. B-441

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